



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/141498

PRELIMINARY RECITALS

Pursuant to a petition filed June 07, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on November 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$1,389.90 for the periods of November 21, 2010 – December 31, 2010 and July 1, 2011 – August 31, 2011.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Daryl Caper

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 23, 2012, the agency issued a Child Care Overpayment Notice and worksheet to the Petitioner notifying her that the agency seeks to recover \$749.90 in child care benefits for the period of November 21, 2010 – December 31, 2010 (Claim # [REDACTED] due to Petitioner's failure to engage in W-2 approved activities.
3. On April 25, 2012, the agency issued a Child Care Overpayment Notice and worksheet to the Petitioner notifying her that the agency seeks to recover \$640 in child care benefits for the period of July 1, 2011 – August 31, 2011 (Claim # [REDACTED] due to Petitioner's failure to engage in W-2 approved activities.
4. On June 7, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the Wisconsin Administrative Code. Wis. Admin. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. Wis. Admin. Code, § DCF 101.23(1) (g). Adm. Code. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. Also see, Wisconsin Shares Child Care Assistance Manual, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, an agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the "preponderance of the evidence" in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that "it is more likely than not" that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

All parents must be participating in an approved activity in order to receive child care assistance. Wisconsin Shares Child Care Assistance Manual (Manual), §1.4.8. Job search is an approved activity:

1.5.4. Wisconsin Works or Tribal TANF Employment Position

Work in a Wisconsin Works employment position, including participating in job search, orientation and training activities under unsubsidized employment, and in education or training activities for trial jobs, community service jobs, or transitional placements. Tribal

TANF participants must meet Wisconsin W-2 financial and non-financial eligibility requirements to be eligible for child care assistance. Manual, §1.5.4.

The agency produced a printout of the Petitioner's W -2 component history indicating that the Petitioner was expected to complete 10 hours/week of employment search activities, 2 hours/week of job readiness activities and 20 hours/week of work experience during the period of September, 2010 – April, 2011. During the period of May – November, 2011, the Petitioner was expected to complete 20 hours/week of employment search activities and 20 hours/week of work experience. The agency also produced a printout of the Petitioner's Non -Participation History with regard to her W-2 activities as well as her child care authorizations for the relevant periods and case comments. The agency also produced evidence of history of child care payments issued for the July 1 – August 31, 2011. The agency did not produce evidence of the child care payments issued for the November 21 – December 31, 2010 period.

The Petitioner disputed that she did not participate in W-2 activities. The Petitioner produced copies of logs from the YWCA Work Experience for the November 21 – December 31, 2010 period. Though this provides some evidence of her participation, it does not prove that Petitioner was fully compliant with all components of her W-2 plan. The Petitioner produced no evidence to demonstrate that she was compliant with the W-2 plan for the July 1 – August 31, 2011 period. The Petitioner was given an opportunity post-hearing to produce evidence of participation but no additional documentation was submitted.

Based on the evidence, I am unable to conclude if the agency properly seeks to recover an overpayment of \$749.90 for the period of November 21 – December 31, 2010 because the agency did not provide proof of the child care payments issued during that period of time.

Based on the evidence, I am able to conclude that the agency properly seeks to recover an overpayment of \$650 for the period of July 1 – August 31, 2011 based on the Petitioner's non -participation in W-2 activities.

CONCLUSIONS OF LAW

That the agency did not meet its burden to prove that it correctly seeks to recover an overpayment of \$749.90 for the period of November 21 – December 31, 2010 because it did not produce evidence of the child care payments issued during that period.

That the agency met its burden to prove that it correctly seeks to recover an overpayment of \$640 for the period of July 1 – August 31, 2011 based on the Petitioner's non -participation in W-2 activities.

THEREFORE, it is

ORDERED

That with regard to Claim # [REDACTED] for \$749.90 the agency is ordered to rescind its Child Care Overpayment Notice of April 23, 2012 and to cease all collection activity with regard to the claim. These actions shall be completed within 10 days of the date of this decision.

That with regard to Claim # [REDACTED] for \$640, the petition shall be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2012

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud