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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CCO/141905

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 23, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration determining that Petitioner had been overpaid child care benefits, a hearing was commenced on September 19, 2012, adjourned to give Petitioner an opportunity to obtain records and concluded on November 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the evidence is sufficient to demonstrate that Petitioner was overissued child care benefits.

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: T. Terrell and K. Love  
Milwaukee Early Care Administration  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a child care overpayment notice dated May 25, 2012 that informed Petitioner that he had been overpaid child care benefits in the amount of \$1349.42 for the period from January 22,

2012 through April 30, 2012. The reason for the alleged overissuance was that Petitioner had not been participating in W-2 activities as required.

3. Though the overpayment time period alleged here is almost 3 months, the entire overpayment is from four weeks; January 22, 2012, April 8, 2012, April 15, 2012 and April 22, 2012.
4. Petitioner's household consists of himself, the mother of his children and the children. The mother does work full-time.
5. Petitioner did ask for W-2 agency for child care so that he could perform job search activities. This case was renewed in mid-January 2012. Petitioner does not receive any cash benefit but is required to do 15 hours of job search activities per week and in return is permitted to use child care benefits.
6. The childcare agency was notified by the W-2 agency that Petitioner had not submitted required verification with his job search records for the weeks noted at Finding # 3 and had not, therefore, participated at all in job search activities for those weeks.
7. The childcare facility that Petitioner was authorized to use was paid in the amount of \$1349.42 for the weeks noted at Finding # 3.
8. Petitioner's job search logs from an online data base at MilwaukeeJobs.com indicate that he applied for 23 jobs during the week of April 8, 27 jobs during the week of April 15 and 13 jobs during the week of April 22.

### 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.

I am declining to sustain this overpayment. There are multiple reasons.

As for the week of January 22, 2012, Petitioner testified that the children did not attend day care during that week. He did attempt to obtain sign-in/sign-out sheets from the childcare facility but they would not release those to him. Agency representatives indicated that the childcare facilities are not required to do so. The agency itself did not have any sign-in/sign-out sheets for that week. While Petitioner was overly animated at the two hearings involved here, I generally found his testimony to be credible. He was organized, he understood this case, and given an opportunity to seek records to help present his case, he did attempt to do so.

As for weeks in April, Petitioner’s testimony was that he had submitted the same records for those weeks that he had for all of the other weeks and no one ever told him that he was submitting the wrong records or incomplete records. He was able to describe in some detail what the time logs looked like and the information included on them and testified that he always submitted those records. Though the agency relies on a case note from May 15, 2012 that says that Petitioner was told on May 9, 2012 that records were not complete, the May 9, 2012 case notes make no mention of that and, also, this is after the time period involved here. Case notes from February and March did not make any comments about records. Further it is clear that he was doing job search as he was able to present a print out of his job search activities that he had applied for jobs as noted at Finding # 8.

The W-2 agency did not provide the childcare agency with any documents to demonstrate what Petitioner had or had not submitted. The W-2 agency has not provided any documents to demonstrate what a person is supposed to submit. If, however, a person does not complete job search as required the W-2 agency is mandated to discontinue the benefit/terminate the case. *See Wisconsin Works Manual at §11.4.1*. There is no indication here that the W-2 agency discontinued Petitioner’s case. In fact, the W-2 agency case notes indicate he was asked if he needed additional services (Case note from May 9, 2012, part of Ex. # 11). As the W-2 agency took no action against Petitioner there was no hearing right with the W-2 agency giving Petitioner the opportunity to challenge the agency conclusion that he had not completed his job search requirement. Finally, the W-2 caseworker assigned to Petitioner’s case was to appear at the November 15, 2012 hearing but called in sick that morning. There was no appearance by any coverage worker for the assigned caseworker.

Petitioner also notes that the reason his job searches are primarily done online is that going door-to-door to ask businesses if they are hiring is no longer acceptable to most businesses. Many businesses have a sign on the door directing individuals not to inquire in person about employment. I note that from my own experience I have seen those signs at the entryway to many establishments in this community also.

Again, for all these reasons I am declining to sustain the overissuance alleged here. A few case notes from the W-2 agency are not sufficient in this case to demonstrate that Petitioner had not lived up to his W-2 job search obligations especially in the face of his job search records. And, again, I found Petitioner's testimony that he did not use child care in January to be credible.

Finally, for future reference, Petitioner should note that he should keep a copy of anything that he submits to the W-2 agency. If that information is not what is expected of him the W-2 agency is supposed to terminate the case.

### **CONCLUSIONS OF LAW**

That the evidence supplied by the W-2 agency to the childcare agency as proof of Petitioner's noncompliance with his approved activities for purposes of the childcare program is not sufficient to demonstrate that Petitioner received more child care benefits than he was entitled to.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to take the steps necessary to reverse the overpayment was the subject of this hearing. This must be done within 10 days of the date of this decision.

### **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 26th day of November, 2012

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\sDavid D. Fleming  
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 November 26, 2012.

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