



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]

DECISION

CCO/142830

PRELIMINARY RECITALS

Pursuant to a petition filed August 2, 2012, under Wis. Stat. § 49.195(3) (2009-10), to review a decision by the Winnebago County Department of Human Services ["County"] in regard to an overpayment of Wisconsin Works ["W-2"] Child Care benefits ["CC"], a Hearing was held via telephone on August 28, 2012. At petitioner's request the record of the August 28th Hearing was held open until September 11, 2012. The Hearing in this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: FOP-142831 & MOP-142832.

The issue for determination is whether the following Claim may be established against petitioner for an overpayment of W-2 CC: Claim # [REDACTED] for the time period October 2011 to May 2012 in the total amount of \$4,408.87.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850.
BY: Leslie Vosters, ESS
Winnebago County Department of Human Services
220 Washington Avenue
Oshkosh, Wisconsin 54903-2187

OTHER PERSON PRESENT:

██████████, father of petitioner's child
 Jack Haldeman, Manager & Investigator, O'Brien & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Winnebago County, Wisconsin.
2. Petitioner has a minor child (male; age 3 years) in common with adult male GC.
3. The County established the following Claim against petitioner for an overpayment of W-2 CC: Claim # ██████████ for the time period October 2011 to May 2012 in the total amount of \$4,408.87.
4. During the time period of the overpayment detailed in *Finding of Fact #3*, above, petitioner, GC, and their child all lived together.
5. Petitioner never reported to the County that GC was living with her during the time period of the overpayment detailed in *Finding of Fact #3*, above.
6. During the time period of the overpayment detailed in *Finding of Fact #3*, above, GC had income; GC's income put petitioner over the W-2 CC income limit.

DISCUSSION

The County must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2009-10); See also, Wis. Admin. Code §§ DCF 101.23 (February 2012) & 201.04(5)(a) (April 2012); *Wisconsin Shares Child Care Assistance Manual* (5/3/12) ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to County error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (April 2012); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (February 2012); CC Manual 2.1.5.1. & 2.1.5.2.

Parents or other persons receiving W-2 CC must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change. CC Manual 1.15.1.

This includes changes in the composition of the household. CC Manual 1.15.2. Income¹ and household composition are required to be verified. CC Manual 1.7.2. No eligibility exists for W-2 CC when an individual has the power to produce required verification but refuses or fails to do so. Wis. Admin. Code § DCF 101.11(3) (February 2012); CC Manual 1.7.7. The participant must be informed in writing of the verification items required, including the due date. The applicant or participant has 7 working days from the date the verification request is made to provide the needed verification. If the applicant is able to produce the information, but refuses or fails to do so, no eligibility shall exist. CC Manual 1.7.4, 1.7.5 & 1.7.7, see also, 1.4.6; *Wisconsin Works Manual* ["W-2 Manual"] 4.1.0 (1-31-04).; see also, Wis. Stat. § 49.155(1m)(d) (2009-10).

Petitioner never reported to the County that GC was living with her during the time period of the overpayment detailed in *Finding of Fact* #3, above. Therefore, it was correct to establish against petitioner the W-2 CC overpayment Claim noted above.

The County presented convincing evidence that GC was living in the same home with petitioner during the time period in question: GC owns the home; GC keeps several vehicles at the home and one of those vehicles is used routinely by petitioner; GC gets his mail at the home; GC mows the lawn at the home; GC takes care of maintenance at the home; GC keeps 3 of his dogs at the home; Wisconsin Court records have the home's address as GC's address; GC admits that he is at the home "sometimes 5 days a week" (but claims he does not sleep overnight there). Based on all of this evidence, much of which is derived from statements made by petitioner and GC, it must be concluded that during the time period of the overpayments petitioner, GC, and their child all lived together.

Petitioner and GC both testified that they did not live together during the time period in question except for perhaps the first few months (until February 2010). This is not credible. At petitioner's request the record of the August 28th Hearing was held open until September 11, 2012 to allow petitioner to submit additional evidence. In particular, petitioner stated that she paid rent to GC and that she would submit copies of checks to show this. Nothing was ever received from petitioner. Petitioner and GC testified that they did not live together because they had a fight. They stated that they would submit police reports concerning the fight. Nothing was ever received from petitioner or GC.

Finally, petitioner argues that the County "went by hearsay." This is not correct. Much of the County's evidence is statements made by petitioner or GC (or both) -- either at the Hearing or prior to the Hearing during the investigation. Such statements are not hearsay. See, Wis. Stat. § 908.01(4) (2009-10). Both petitioner and GC were present at the August 28th Hearing and testified.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for overpayments of W-2 CC: Claim # [REDACTED] for the time period October 2011 to May 2012 in the total amount of \$4,408.87.

NOW, THEREFORE, it is

¹ Low-income parents applying for child care assistance must have income at or below 185% of the Federal Poverty Level ["FPL"]. Once a family has established eligibility, income can rise to 200% FPL. Parents are eligible for child care assistance, until the income exceeds 200% FPL. Wis. Stat. § 49.155(1m)(c) (2009-10); CC Manual 1.6.2 & 1.6.3.

ORDERED

that the petition for review herein be and the same is hereby 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 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, Second Floor, Madison, Wisconsin 53703-2866. 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 Madison,
Wisconsin, this 19th day of September, 2012

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

c: Winnebago County Department of Human Services - email
Department of Children and Families - email



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 19, 2012.

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