



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

CCB/142950

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 09, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on October 25, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's child care was correctly discontinued because income exceeded program income limits for a short period because of a short term increase in household income.

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: Belinda Bridges  
Milwaukee Enrollment Services  
1220 W Vliet St  
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 and his spouse were notified that the child care benefits for their children were to be discontinued effective August 1, 2012. The reason for the discontinuance was that household income exceeded program income limits. In July Petitioner reported an increase in income.
3. Petitioner's household size is six.
4. Petitioner and his spouse are both employed.
5. Petitioner's spouse's income is stable and not in dispute here. It is \$2924 per month (\$17/hr x 40 hrs x 4.3wks/mo).

6. Petitioner works for a private security firm that provides security for a major bank in Wisconsin. His standard hours are a three-week rotation of 38 hours, 38 hours and then 40 hours. His rate of pay is \$12 per hour. Because of a major bank merger and consolidation Petitioner worked overtime for about three months. This was because of travel to various locations around the State and overnight conversions of systems. His employer does not normally allow overtime. Because of the overtime the agency determined Petitioner's monthly income to be \$2948.94.
7. Given his normal pay and schedule Petitioner's income is \$1986.60 ( $\$12 \text{ hr} \times 38 \text{ hrs} \times 3 \text{ wks} + \$12 \times 40 \text{ hrs} \times 1 \text{ week} = \$1848/4 = \$462 \times 4.3 \text{ wks/mo}$ ).
8. With the overtime Petitioner's household income was \$5872.94 per month. Without the overtime aberration it is \$4910.60 per month.

### DISCUSSION

There is an income test for child care eligibility, both at application and for ongoing eligibility. To obtain eligibility it must be below 185% of the FPL. To maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §1.6.3. As Petitioner's case was ongoing it is the 200% of the Federal Poverty Level (FPL) test that is to be applied. 200% of the FPL for a group of 6 is \$5162.00. See *Operations Memo 12-06, issued and effective February 1, 2012*.

For purposes of the child care program income is calculated prospectively by making the best estimate of income based upon information available. A multiplier of 4.3 weeks per month is used to arrive at an average monthly income. *Wisconsin Shares Child Care Assistance Manual*, §1.6.6. Further:

#### **1.6.7 Fluctuating Income**

If the amount of regularly received income varies, use an average.

##### **Example:**

Harold is a salesman and receives a commission check every quarter. His last commission payment was \$150. Divide \$150 by three (3) months and it averages \$50 per month income.

Income that is normally obtained but received on an irregular basis is to be averaged over the period between payments.

##### **Example:**

Harold is a salesman who doesn't always receive a commission check every quarter. He did not receive a commission last quarter. His last check was \$200 and was received six (6) months ago. Divide the \$200 by six (6) months and count \$33.33 per month as his income until he reports receiving another commission check.

If neither the amount nor the frequency is consistent or predictable, count it only for the month in which it is received.

##### **Example:**

Harold is a salesman and he receives a sales commission check whenever his company determines that their profits will allow them to pay out commissions. Harold has not received a commission check for 9 months although before that he was getting them on a quarterly basis. Harold reports that he received a \$175 check this month, but doesn't know when he will receive one again. Count \$175 for this month's income.

*Manual*, §1.6.7.

Finally, one time income is budgeted in the month that is received. *Manual*, §1.6.8.

The circumstances of this case did not fit neatly into any of the categories above. Petitioner's overtime was not a one-time occurrence; nor was it income that was normally received. The frequency of

Petitioner's income was known but not the consistency. Looking at the paycheck stubs submitted, the closest category is income that is regularly received, albeit for only for about three months, but varies and is, therefore, to be averaged. As income is to be budgeted prospectively using an average to determine what income will be going forward, here averaging Petitioner's overtime would be the best way of determining income. While there are no specific instructions on averaging in the general income section of the *Manual*, I note that the self-employment provisions do permit the use of a twelve month average. See *Manual*, §1.6.15. I conclude that averaging Petitioner's income will give the best picture of household income and if at the next review it is clear that no overtime income is earned that will be reflected in the next year average.

Petitioner's total overtime was not available at the hearing so the agency will have to obtain it from Petitioner. The agency will have to redetermine Petitioner's household income by including all of Petitioner's overtime and averaging it over the year and redetermine child care eligibility effective August 1, 2012.

Petitioner did try to get a letter from his employer explaining that overtime is not usually allowed but it was not sent. Nonetheless, Petitioner should be aware that a change in income that puts the family over 200% of the FPL must be reported within 10 days and the agency will must act on that change:

#### 1.15.1 Reporting Requirements

Parents or other persons receiving Wisconsin Shares child care assistance 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.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

\*\*\*

#### 1.15.2 Examples of Required Information to be Reported

Examples of some of the information that parents are required to report include:

- A change in the scheduled approved activity hours
- A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

\*\*\*

#### 1.15.3 Agency Time Frame for Eligibility Redetermination

Child care administrative agencies shall re-determine parent need for service and eligibility within ten business days following receipt of a parent's report of a change in circumstances that may affect their eligibility, and at least every six months.

*Manual*, §§1.15.1; 1.15.2 and 1.15.3.

### **CONCLUSIONS OF LAW**

That fluctuating income, regularly received, is to be averaged.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the agency with instructions to: (1) within 10 days of the date of this decision request verification of all of Petitioner's overtime income; (2) Petitioner shall provide this verification within 10 days of said request; (3) within 10 days of receiving verification of Petitioner's overtime, the agency shall redetermine the eligibility of Petitioner's CCB benefits effective August 1, 2012 using the verified overtime income and averaging it over 12 months and (4) shall issue a notice of decision regarding same.

**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 23rd day of November, 2012

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 23, 2012.

Milwaukee Enrollment Services  
Child Care Benefits



**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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 4, 2012.

Milwaukee Enrollment Services  
Child Care Benefits