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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCO/143177

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 15, 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 (CC), a hearing was held on October 17, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid in CC benefits for the October 30, 2011 through March 3, 2012 period.

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: Keisha Love

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

**ADMINISTRATIVE LAW JUDGE:**

Nancy J.Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The petitioner utilized day care services and received CC benefits for the October 30, 2011 through March 3, 2012 period. The petitioner had been working at [REDACTED] in October 2011, but the parties agree that her employment there ended on October 27, 2011.
3. The cessation of the [REDACTED] employment was not reported by the petitioner to the agency until January 30, 2012. The petitioner was supposed to report the change within 10 days.
4. The petitioner contends that she was working at [REDACTED] from January 16 through March 3, 2012. [REDACTED] is also the licensed daycare that the petitioner's children attended.
5. Because the agency considers [REDACTED] to not be a "qualified employer," that employment did not count as a "qualified activity" for CC purposes.
6. On July 12, 2012, the Department issued a *CC Overpayment Notice (Notice)* to the petitioner. The *Notice* advised that the petitioner had been overpaid \$4,805.41 in CC for the October 30, 2011 to March 3, 2012 period.

### DISCUSSION

#### I. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO (CLIENT/AGENCY) WAS AT FAULT IN CREATING THE OVERPAYMENT .

The applicable overpayment rule requires recovery of the overpayment, regardless of whether it was the fault of the client or the agency. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual (Manual)*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy is available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

#### II. QUALIFIED EMPLOYER.

In this case, the petitioner does not contest several things. She does not contest that she took her children to day care during the identified period, and she does not quarrel with the agency's arithmetic in the overpayment calculation.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the eligibility criteria, then CC cannot be granted. The agency asserts that the petitioner's lack of employment/approved activity made CC benefits unnecessary. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

**(1m) ELIGIBILITY.** A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and *child care services for that child are needed in order for the individual to do any of the following* :
  1. Meet the school attendance requirement under s.49.26(1)(g)[Learnfare, for minor parents].
    - 1m. Obtain a high school diploma ...
    2. *Work in an unsubsidized job* ...
    3. Work in a Wisconsin works employment position ...
    - 3m. Participate in a job search or work experience component of the food stamp ... program.

4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

[ *emphasis added*]

Wis. Stat. §49.155(1m)(a). See in accord, Wis. Admin. Code §DCF 201.04(2g)(d). Neither section 49.141(1), section 49.155, nor Wisconsin Administrative Code Chapter 201 defines either "un subsidized job" or "employer."

Another code chapter with some limited provisions regarding CC contains the following definition of "unsubsidized employment:"

**DCF 101.03 Definitions.** Unless otherwise provided, in this chapter:

...

**(35)** "Unsubsidized employment" means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities.

Wis. Admin. Code §DCF 101.03(35). Absent from this definition is any requirement that the employer have a Federal Employer Identification Number (FEIN).

The Department's policy document states that unsubsidized employment is an approved activity for CC purposes. It goes on to declare that only two types of unsubsidized employment can create nonfinancial eligibility: (1) self-employment or (2) "working for a qualified employer who has a Federal Employer Identification Number (FEIN)." *Manual*, §1.5.3. The petitioner agrees that she was **not self-employed**. The Department's representative indicated that the questionable employer here, ██████████ did not have a FEIN during the overpayment period, and was not paying payroll taxes. See also, *id.*, §1.5.3.1.

I believe that the *Manual's* treatment of employment by a qualified employer is a reason able fleshing out of the statutory and code requirements, and that its application to this specific case is reasonable. The evidence available in the instant case does not warrant an exception to the policy. The petitioner has been **inconsistent** in her statements to the agency as to her start date at ██████████ (January 16 or February 1, 2012). The ██████████ owner did not testify at hearing. The owner did have a conversation with a Department worker, in which she advised that she was "behind" on paying payroll t axes.

### CONCLUSIONS OF LAW

1. The petitioner was not working in unsubsidized employment for a "qualified employer" during the alleged overpayment period.
2. The Department's collection efforts on claim # ██████████ are appropriate.

**THEREFORE, it is**

**ORDERED**

That the petition 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 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 Madison,  
Wisconsin, this 3rd day of December, 2012

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\sNancy J. Gagnon  
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 December 3, 2012.

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