



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/143235

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, a hearing was held on October 24, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent erred in establishing an overpayment of Child Care benefits due to petitioner's non-participation in a W-2 approved activity.

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:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a Child Care assistance group receiving Wisconsin Shares benefits in the period of February 13, 2012 to June 30, 2012.

2. On March 15, 2012, the petitioner's case was referred to the agency's benefits recovery unit to investigate utilization of Child Care benefits while not participating in W-2 approved activities. See, Exhibit 2.
3. On July 20, 2012, the county agency issued a CHILD CARE (CC) OVERPAYMENT NOTICE and Worksheet; and a second basically identical CHILD CARE (CC) OVERPAYMENT NOTIFICATION letter (dated July 23, 2012), to the petitioner, informing her that the county agency had determined that she had been overpaid \$465.18 in Child Care benefits in the period of February 13, 2012 – June 30, 2012, due to a "CLIENT ERROR".
4. On August 15, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency determination that she had been overpaid Child Care benefits.

DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than she is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3).

Wis. Stat. § 49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. The department has a Wisconsin Shares Child Care Assistance Manual that provides the specific activities, policies and eligibility requirements (including a discussion of income limits and other non-financial requirements) to qualify for the program. <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>

A parent/caregiver is eligible for child care benefits if she needs the care so she can: attend high school or a general equivalency program; youth employment; work in a sheltered workshop; work in an unsubsidized job or legitimate self-employment; work in Wisconsin Works (W-2) or Tribal TANF employment position, including participation in job search, orientation and training activities; participate in Learnfare; participate in FSET or work study; participate in qualified pre-job training or an apprenticeship. Wisconsin Share Child Care Assistance Manual, Chapter 1, §§ 1.5.0, et al., & 1.4.8.

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

At hearing, the respondent provided documentation of the payments made to petitioner's daycare provider, and further testified that this daycare was "enrollment based," signifying that payment was made whether the child was in attendance or not. See, Exhibit 2. The respondent submitted the Non-Participation History printouts, which served as the basis of the Child Care overpayment worksheet. *Id.* Electronic case comments further establishing the petitioner's non-participation in W-2 approved activities were also entered into evidence. *Id.* I found the respondent's case to be well-prepared and sufficient to establish that the action taken by the county was proper.

The petitioner attempted to argue that certain periods identified as part of the overpayment were incorrect, since her child was not attending daycare then. Respondent successfully countered that concern by noting that the daycare payments were enrollment based. Petitioner also argues that she was, in fact, participating in W-2 approved activities on some of the days where overpayment is alleged. However, she did not provide any specific information as to which days she was referring.

I also note that the overpayment worksheet identifies certain days where petitioner was credited with working part of the day. Misunderstanding day care charges that are “enrollment based” appears to be a common issue in Child Care overpayment cases. It appears that the petitioner here thought that, by not using Child Care services on a specific date it would result in a ‘no harm -no foul’ scenario. While I do not find any intent to deceive on the part of the petitioner, I cannot find that petitioner has provided any substantive evidence of an error by the respondent in determining the non-participation and/or calculating the resulting overpayment.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid child care assistance due to non-participation in W-2 approved activities.

THEREFORE, it is

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 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 Madison,
Wisconsin, this 15th day of November, 2012

/sPeter McCombs
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 15, 2012.

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