



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCO/143394

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover child care payments, a hearing was held on September 25, 2012, by telephone.

The issue for determination is whether petitioner was overpaid child care.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Second Floor
Madison, Wisconsin 53703-2866

By: Christy Warden
Brown County Human Services
111 N. Jefferson Street
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner received child care assistance in 2012. On May 23, 2012, petitioner reported to the county agency that the father of the children was back in the home and that he was not employed. She asked if she could continue to take the children to day care and was told that the authorization was still in place.

3. During an eligibility review in July, 2012, petitioner reported again that the father was unemployed.
4. The county determined that petitioner should have been ineligible for child care beginning May 26, 2012 and that the agency worker erred in continuing child care after the father was reported to be in the home. Accordingly by a notice dated August 16, 2012, the county informed petitioner that she was overpaid \$1,340.06 in child care between May 1 and August 31, 2012 due to non-client error, claim no. [REDACTED]. Although the notice stated May 1 as the beginning date, the overpayment actually started effective May 26 and ran through mid-July.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

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 Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the 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. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

Petitioner did nothing wrong here. She reported the father's re-entry into the home and that he was not working. She asked if she should stop taking the children to day care. She was told that it was okay to take them. Unfortunately the law requires that the agency recover the overpayment even if the error was made by the agency. I therefore must conclude that the agency correctly determined the child care overpayment.

CONCLUSIONS OF LAW

The county correctly determined a child care overpayment caused by agency error.

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 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 28th day of September, 2012

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

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



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The preceding decision was sent to the following parties on September 28, 2012.

Brown County Human Services
Public Assistance Collection Unit
Child Care Fraud