



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

CCO/143742

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 12, 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 via telephone on December 05, 2012. This matter concerns the same issue as the following matter: CCO/140899. CCO/140899 was dismissed due to abandonment which resulted from confusion because petitioner does not speak English. Accordingly, petitioner was granted this new Hearing designated CCO/143742.

The issue for determination is whether it was correct to establish the following Claim against petitioner for overpayments of Wisconsin Works ["W-2"] Child Care benefits ["CC"]: Claim Number [REDACTED] for the time period October 9, 2011 to December 31, 2011 in the total amount of \$6,893.31.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tamika Terrell, ESS

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

**OTHER PERSONS PRESENT:**

Amy Her, Hmong/English Interpreter, Next Door Foundation  
Stave Xiong, Hmong/English Interpreter, Milwaukee County

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The County established the following Claim against petitioner for overpayments of W-2 CC: Claim Number [REDACTED] for the time period October 9, 2011 to December 31, 2011 in the total amount of \$6,893.31. Exhibits #1A & #1B.
3. Petitioner's employment ended on July 29, 2011 and she was not in an approved activity after that time; petitioner did not use CC after July 29, 2011 until October 9, 2011 when she began using CC again.
4. The Overpayment listed in *Finding of Fact #2*, above, was caused by CC agency administrative error; the CC agency failed to end petitioner's eligibility for CC when petitioner's employment ended on July 29, 2011; in October 2011 the CC agency held a CC spot open for petitioner when petitioner was not eligible to have a slot held open because she was not employed at the time.

### 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* (10/14/09) ["CC Manual"], 2.3.1. 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); See also, Wis. Admin. Code § DCF 201.04(5)(a)1. (April 2012). A CC overpayment is any 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 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); Manual 2.3.1.

Petitioner's employment ended on July 29, 2011. However, the CC agency failed to end petitioner's eligibility for CC as it should have. In October 2011, due to a medical condition, petitioner requested that a CC slot be held open for her. However, in order for a CC slot to be held open the parent must be employed prior to the leave. CC Manual 3.11.3. Petitioner was not employed at the time. Nevertheless, the CC agency still held a CC spot open for petitioner.

Petitioner does not dispute any of the above. However, petitioner argues that the CC overpayment is not her fault. She argues that she had medical documentation was told that she was approved.

It is true that the overpayment is not petitioner's fault. Nevertheless, as noted above, a W-2 CC overpayment is any 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. Even if the overpayment is partly or wholly due to CC agency error it must still be repaid. Therefore, petitioner is liable for the overpayment listed in *Finding of Fact #2*, above.

**CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to establish the following Claim against petitioner for overpayments of W-2 CC: Claim Number [REDACTED] for the time period October 9, 2011 to December 31, 2011 in the total amount of \$6,893.31.

**NOW, 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 10th day of December, 2012

---

\sSean P. Maloney  
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 10, 2012.

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