



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/143911

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 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 December 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was over-issued childcare benefits in the amount of \$9811.10 for the period of July 1, 2011 to January 31, 2012.

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: Darryl Caper

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On August 30, 2012, the agency sent Petitioner a Child Care (CC) Overpayment Notice indicating that he was overpaid child care benefits in the amount of \$9811.10 for the period of July 1, 2011 to January 31, 2012. (Exhibit 4, pg. 2)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 18, 2012.
4. During the time in question, Petitioner had a household of four that included three children and Petitioner received child care benefits for those children. (Testimony of Petitioner)

DISCUSSION

All overpayments made to a client, whether due to client error, agency error or fraud, **must** be recovered from the client. *Child Care Policy Manual (CCM) §2.1.5.2 and §2.1.5.1* “The Department and local agencies administering child care shall take all steps necessary to recover from the client, funds paid to the child care provider when the client was not eligible for the level of benefits paid.” Overpayments can occur when changes in income are not reported as required. (Id.)

It is the agency’s contention that Petitioner’s income exceeded eligibility limits between July 2011 and January 2012. Petitioner does not dispute receiving the child care benefits in question, but disagrees with the agency’s income determination. In such cases, the agency bears the burden to prove that an overpayment occurred and in what amounts.

The agency used the State Wage Records from the Department of Workforce Development to estimate Petitioner’s monthly income. (See Exhibit 4, pg. 41) However, Petitioner provided the agency with all of his check stubs for July 2011 through December 2011. (Exhibit 4, pgs. 5-31)

Comparing the information in Petitioner’s checks stubs with the information in the State Wage Records, it is apparent that the State Wage Record is the less reliable source of income information, because the State Wage Record likely includes amounts paid to Petitioner as mileage reimbursement. Per *CCM §1.6.11*, reimbursements are not to be included in income.

In order to be eligible for child care benefits, an applicant’s gross income must be below 185% of the Federal Poverty Level (FPL). *CCM §1.6.2* During 2011, the time in question, 185% of the FPL for a family of four was \$3446. (*Operations Memo 11-06*)

Once a person qualifies for childcare benefits his/her gross income cannot exceed 200% of the FPL. *CCM §1.6.3* During 2011, 200% of FPL for a family of four was \$3725.00. (*Operations Memo 11-06*)

Changes in income must be reported within ten days of the change. *CCM §1.15.1* A change is defined, in part, as income that increases by at least \$250.00 or more, income that decreases \$100 or more, or any increase in income that raises a recipient’s income over 200% of FPL. *CCM §1.15.2*

All available gross earned and unearned income must be counted and calculated prospectively. *CCM §§1.6.2; 1.6.4-1.6.6* Monthly income calculations are to be made by making the best estimate of monthly income based upon the information available, using an average 4.3 week month. (*Id.*)

If a person has regularly received income, income is determined by multiplying the hourly rate of payment by the number of hours worked per week, and then by multiplying the sum by 4.3 weeks. *CCM §1.6.6*

If a person has fluctuating income, income must be averaged. If income is normally obtained, but received on an irregular basis, it should be averaged over the period between payments. If neither the amount, nor the frequency is consistent, average the income in the month received. *CCM §1.6.7*

Looking at Petitioner's paychecks, it appears he has fluctuating income of various types that fall into the latter category, and so must be averaged in the month the income is received.

Based upon the foregoing it is found that the agency should have based its income determination upon Petitioner's paystubs, not the state wage record.

JULY 2011

Because income is estimated prospectively, Petitioner's estimated income for July 2011 would have been based upon his income in June 2011. Thus, Petitioner's financial eligibility for childcare benefits in July 2011 would have also been based upon his income in June 2011.

The agency made no assertion that Petitioner's income in June 2011 pushed him over the income limits. Indeed, the State Wage Records, upon which the agency relied, bears out that Petitioner's average monthly income for April, May and June 2012 was \$1985.47, well below the \$3725.00 threshold for continued eligibility. Accordingly, it is found that no overpayment occurred for the month of July 2011.

AUGUST 2011

Petitioner's August eligibility would be based upon his income from July 2011. In July 2011, Petitioner had five, weekly pay stubs. Based upon those paystubs, his income should have been calculated as follows:

Hourly pay:

$28.15 + 20.21 + 37.91 + 28.83 + 28.30 = 143.4$ hours worked in July
 $143 \text{ hours} / 5 \text{ weeks in July} = 28.68$ average hours worked per week in July.
 $28.68 \times \$15.90 \text{ per hour} = \456.01 average hourly income per week
 $\$456.01 \times 4.3 \text{ average weeks per month} = \1960.85 earned per month

Daily pay appeared on three checks:

$3.00 \text{ units} + 1.00 \text{ units} + 1.00 \text{ units} = 5.00 \text{ units}$
 $5.00 \text{ units} / 5 \text{ weeks in July} = 1.00$ average units per week
 $1.00 \text{ units per week} \times \$107.50 \text{ per unit} = \107.50 earned per week
 $\$107.50 \text{ per week} \times 4.3 \text{ average weeks per month} = \462.25 per month

Overtime appeared on three checks:

$6.85 \text{ hours} + 12.30 \text{ hours} + 1.25 \text{ hours} = 20.40$ hours overtime worked in July
 $20.40 / 5 \text{ weeks in July} = 4.08$ average hours of overtime per week
 $4.08 \times \$23.85 \text{ per hour overtime pay} = \97.31 per week
 $\$97.31 \times 4.3 \text{ average weeks per month} = \418.43 per month

A second category of overtime, referred to as "Calc. Overtime" appeared on one check:

9.69 hours
 $9.69 / 5 \text{ weeks in July} = 1.938$ average hours per week
 $1.938 \text{ hours per week} \times \$9.0682 = \$17.57$ per week
 $\$17.57 \times 4.3 \text{ average weeks per month} = \75.55 per month

Commission appeared on three checks:

1326 units + 440 units + 474 units = 2240 units
 2240 units / 5 weeks in July = 448 average units per week
 448 units x .16 = \$71.68 per week
 \$71.68 per week x 4.3 average weeks per month = \$308.22 per month

Thus, Petitioner's estimated income for August 2011, which was based upon his July 2011 paychecks, is as follows:

\$1960.85 Regular Pay
 +\$ 462.25 Daily Pay
 +\$ 418.43 Overtime type 1 pay
 +\$ 75.55 Overtime type 2 pay
 +\$308.22 Commission

\$3225.30 monthly income

Petitioner's income of \$3225.30 is below the 200% FPL/ \$3725.00 threshold for continued eligibility. As such, no overpayment occurred for August 2011.

SEPTEMBER 2011

Petitioner's eligibility for September would be based upon his income in August 2011. In August 2011, Petitioner had four paystubs.

Hourly pay:

22.22 +40+40+27.42 = 129.64 hours worked in August
 129.64 hours/ 4 weeks in August = 32.41 average hours worked per week in August.
 32.41 hours x \$15.90 per hour = \$515.32 average hourly income per week
 \$515.32 x 4.3 average weeks per month = \$2215.88 earned per month

Daily pay appeared on one check:

1.0 unit /4 weeks in August = .25 average units per week
 .25 units x \$107.50 per unit = \$26.88 earned per week
 \$26.88 x 4.3 average weeks per month = \$155.58 earned per month

A second category of Daily pay appeared on 2 checks:

1.00 + 1.00 units = 2.00 units
 2.00 units / 4 weeks in August = .5 average units per week
 .5 units per week x \$134.38 per unit = \$67.19 earned per week
 \$67.19 x 4.3 average weeks per month = \$288.92 per month

Overtime appeared on four checks:

6.10 + 10.62+18.02+10.94 = 45.68 hours overtime worked in August
 45.68 / 4 weeks in August = 11.42 average hours of overtime per week
 11.42 x \$23.85 per hour overtime pay = \$272.37 per week

$$\$272.37 \times 4.3 \text{ average weeks per month} = \$1171.19 \text{ per month}$$

A second category of overtime, referred to as "Calc. Overtime" appeared on one check:

$$\begin{aligned} &4.50 \text{ hours} \\ &4.50/4 \text{ weeks in August} = 1.125 \text{ average hours per week} \\ &\$1.125 \text{ hours per week} \times \$8.1715 = \$9.19 \text{ per week} \\ &\$9.19 \times 4.3 \text{ average weeks per month} = \$39.52 \text{ per month} \end{aligned}$$

Commission appeared on two checks:

$$\begin{aligned} &764 \text{ units} + 385 \text{ units} = 1149 \text{ units} \\ &1149 \text{ units} / 4 \text{ weeks in August} = 287.25 \text{ average units per week} \\ &287.25 \text{ units} \times .16 = \$45.96 \text{ per week} \\ &\$45.96 \text{ per week} \times 4.3 \text{ average weeks per month} = \$197.63 \text{ per month} \end{aligned}$$

Thus, Petitioner's estimated income for September 2011, which was based upon his August 2011 paychecks, is as follows:

$$\begin{aligned} &\$2215.88 \text{ Regular Pay} \\ &+\$ 155.58 \text{ Daily Pay} \\ &+\$288.92 \text{ Daily Pay2} \\ &+\$ 1171.19 \text{ Overtime type 1 pay} \\ &+\$ 39.52 \text{ Overtime type 2 pay} \\ &+\$197.63 \text{ Commission} \\ &\hline &\$4068.72 \text{ monthly income} \end{aligned}$$

Petitioner's income of \$4068.72 is above the \$3725.00 income limit for a family of four. As such, Petitioner would not have been eligible for Child Care benefits in September 2011. As such, an overpayment occurred for September 2011.

OCTOBER 2011

Petitioner's October eligibility would be based upon his income from September 2011. In September 2011, Petitioner had five, weekly pay stubs. Based upon those paystubs, his income should have been calculated as follows:

Hourly pay:

$$\begin{aligned} &21.47 + 10.43 + 8.35 + 29.65 + 22.61 = 92.51 \text{ hours worked in September} \\ &92.51 \text{ hours} / 5 \text{ weeks in September} = 18.50 \text{ average hours worked per week in} \\ &\text{September.} \\ &18.50 \times \$15.90 \text{ per hour} = \$294.15 \text{ average hourly income per week} \\ &\$294.15 \times 4.3 \text{ average weeks per month} = \$1264.85 \text{ earned per month} \end{aligned}$$

Daily pay appeared on all five checks:

$$\begin{aligned} &2.00 \text{ units} + 4.00 \text{ units} + 3.00 \text{ units} + 1.00 \text{ unit} + 1.00 \text{ unit} = 11.00 \text{ units} \\ &11 \text{ units} / 5 \text{ weeks in September} = 2.2 \text{ average units per week} \\ &2.2 \text{ units per week} \times \$107.50 \text{ per unit} = \$236.50 \text{ earned per week} \\ &\$236.50 \times 4.3 \text{ average weeks per month} = \$1016.95 \text{ per month} \end{aligned}$$

Overtime appeared on two checks and was paid at two different rates, \$23.85 per hour and \$28.20 per hour:

6.75 hours + 11.63 hours = 18.38 hours overtime worked in September
 18.38 / 5 weeks in September = 3.676 average hours of overtime per week
 $\$23.85 + \$28.20 = \$52.05 / 2 = \26.025 average overtime rate
 3.676 hours x \$26.025 per hour overtime pay = \$95.67 per week
 $\$95.67 \times 4.3$ average weeks per month = \$411.38 per month

A second category of overtime, referred to as "Calc. Overtime" appeared on two checks, at two different rates, \$7.9742 per hour and 7.6295 per hour:

3.92 hours + 15.01 hours = 18.93 hours calc. overtime worked in September
 18.93 / 5 weeks in September = 3.79 average hours of overtime per week
 $\$7.9742 + \$7.6295 = \$15.6037 / 2 = \7.80 average overtime rate
 3.79 hours x \$7.80 per hour overtime pay = \$29.56 per week
 $\$29.56 \times 4.3$ average weeks per month = \$127.11 per month

Commission appeared on all five checks:

894 units + 1564 units + 1198 units + 326 units + 442 units = 4424 units
 4424 units / 5 weeks in September = 884.8 average units per week
 884.8 units x .16 = \$141.57 per week
 $\$141.57$ per week x 4.3 average weeks per month = \$608.75 per month

Thus, Petitioner's estimated income for October 2011, which was based upon his September 2011 paychecks, is as follows:

\$1264.85 Regular Pay
 +\$ 1016.95 Daily Pay
 +\$ 411.38 Overtime type 1 pay
 +\$ 127.11 Overtime type 2 pay
 +\$608.75 Commission

 \$3429.04 monthly income

Petitioner's income of \$3429.04 is below the 185% FPL / Qualifying income limit of \$3445.63. As such, no overpayment occurred for October 2011.

NOVEMBER 2011

Petitioner's November eligibility would be based upon his income from October 2011. In October 2011, Petitioner had four, weekly pay stubs. Based upon those paystubs, his income should have been calculated as follows:

Hourly pay for October changed because Petitioner received a raise from \$15.90 per hour to \$16.25 per hour during the middle of one pay period:

17.31 + 17.17 + 28.41 + 28.98 + 40 = 131.87 hours worked in October
 131.87 hours / 4 weeks in October = 32.97 average hours worked per week in October.
 $\$15.90 + \$16.25 = \$32.15 / 2 = \16.08 average wage paid per hour
 32.97 hours x \$16.08 per hour = \$530.16 average hourly income per week

$\$530.16 \times 4.3$ average weeks per month = $\$ 2279.69$ earned per month

Daily pay appeared on 2 checks check:

1 unit + 1 unit = 2 units /4 weeks in October = .5 average units per week
 $.5$ units x $\$115.75$ per unit = $\$57.88$ earned per week
 $\$57.88 \times 4.3$ average weeks per month = $\$248.88$ earned per month

Overtime appeared on two checks:

$11.14 + 11.75 = 22.89$ hours overtime worked in October
 $22.89 / 4$ weeks in October = 5.72 average hours of overtime per week
 5.72 hours x $\$24.375$ per hour overtime pay = $\$139.43$ per week
 $\$139.43 \times 4.3$ average weeks per month = $\$599.55$ per month

Commission appeared on two checks:

334 units + 495 units = 829 units
 829 units / 4 weeks in October = 207.25 average units per week
 207.25 units x $.15 = \$31.09$ per week
 $\$31.09$ per week x 4.3 average weeks per month = $\$133.69$ per month

Thus, Petitioner's estimated income for November 2011, which was based upon his October 2011 paychecks, is as follows:

$\$2279.69$ Regular Pay
+\$ 248.88 Daily Pay
+\$ 599.55 Overtime type 1 pay
+\$ 133.69 Commission
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$\$3261.81$ monthly income

Petitioner's income of $\$3261.81$ is below the 200% FPL / continued eligibility income limit of $\$3725.00$. As such, no overpayment occurred for November 2011.

December 2011

Petitioner's December eligibility would be based upon his income from November 2011. In November 2011, Petitioner had four, weekly pay stubs. Based upon those paystubs, his income should have been calculated as follows:

Hourly pay:

40 hours were worked each week in November
 40 hours x $\$16.25 = \650 earned per week
 $\$650$ per week x 4.3 average weeks per month = $\$2795.00$ earned per month

The only other pay on Petitioner's November pay stubs was overtime pay:

Overtime appeared on four checks:

$.50 + 3.5 + .50 + 16.50 = 21$ hours overtime worked in November

21/ 4 weeks in November = 5.25 average hours of overtime per week
 5.25 hours x \$24.375 per hour overtime pay = \$127.97 per week
 \$127.97 x 4.3 average weeks per month = \$550.27 per month

Thus, Petitioner's estimated income for December 2011, which was based upon his November 2011 paychecks is as follows:

\$2795.00 Regular Pay
+\$ 550.27 Overtime type 1 pay
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\$3345.27 monthly income

Petitioner's income of \$3345.27 is below the 200% FPL / continued eligibility income limit of \$3725.00. As such, no overpayment occurred for December 2011.

January 2012

Petitioner's eligibility for January 2012 was based upon income earned in December 2012. In December 2012, Petitioner received five weekly paychecks.

Hourly pay:

17.34 + 18.02 + 4.55 + 7.38 + 12.96 = 60.25 hours worked in December
 60.25 hours / 5 weeks in December = 12.05 average hours worked per week in July.
 12.05 hours x \$16.25 per hour = \$195.81 average hourly income per week
 \$195.81 x 4.3 average weeks per month = \$841.98 earned per month

Daily pay appeared on all five checks:

2units + 3 units + 3 units + 4 units + 3 units = 15 units
 15 units / 5 weeks in December = 3 average units per week
 3 units x \$115.75 per unit = \$347.25 earned per week
 \$347.25 x 4.3 average weeks per month = \$1493.18 earned per month

Overtime appeared on two checks at two different rates of pay, \$25.6134 per hour and \$24.375 per hour:

3.20 hours + 12.72 hours = 15.92 hours overtime worked in December
 15.92 / 5 weeks in December = 3.18 average hours of overtime per week
 $\$25.6134 + \$24.375 = \$49.9884 / 2 = \24.99 average overtime wage per hour
 3.18 x 24.99 per hour overtime pay = \$79.47 per week
 \$79.47 x 4.3 average weeks per month = \$341.72 per month

A second category of overtime, referred to as "Calc. Overtime" appeared on three checks at varying rates of pay, \$9.4768, \$8.8140 and \$8.828:

5.38 + 7.70 + 5.71 = 18.79 calc. overtime worked in December
 18.79/5weeks in December = 3.76 average hours per week
 $\$9.4768 + \$8.8140 + \$8.828 = \$27.12 / 3 = \$9.04$ average rate paid
 3.76 hours per week x \$9.04 = 33.99 per week
 \$33.99 x 4.3 average weeks per month = \$146.16 per month

Holiday pay appeared on two checks:

8 hours + 8 hour = 16 hours
 16 hours / 5 weeks in December = 3.2 average hours per week
 3.2 hours x \$14.47 = \$46.30 per week
 \$46.30 per week x 4.3 average weeks per month = \$199.09 per month

Commission appeared on all five checks:

1228 units + 1173 units + 901units +1425 units + 1130= 5857 units
 5857 units / 5 weeks in December = 1171.40 average units per week
 1171.40 units x .15 = \$175.71 per week
 \$175.71 per week x 4.3 average weeks per month = \$755.55 per month

Thus, Petitioner's estimated monthly income for January 2012, which was based upon his December 2011 paychecks is as follows:

\$841.98 Regular Pay
 +\$ 1493.18 Daily Pay
 +\$ 341.72 Overtime type 1 pay
 +\$ 146.16Overtime type 2 pay
 +\$ 199.09 Holiday pay
 +\$755.55 Commission

\$3777.68 monthly income

Petitioner's income of \$3777.68 is above the 200% FLP, continuing eligibility income limit of \$3725.00 income limit for a family of four. As such, an overpayment occurred for January 2012.

In summary, Petitioner lost eligibility as of September 2011, but regained it in October 2011 until he again lost eligibility in January 2012.

CONCLUSIONS OF LAW

The agency did not correctly calculate Petitioner's income when determining his eligibility for ChildCare benefits July 1, 2011 through January 31, 2012 and therefore, its determination that Petitioner was overpaid child care benefits from July 1, 2011 through January 31, 2012 is not correct.

Petitioner was overpaid Child Care benefits in September 2011 and January 2012 only.

THEREFORE, it is

ORDERED

That the agency amend the overpayment notice issued on August 30, 2012, to rescind claims for July 1011, August 2011, October 2011, November 2011 and December 2011. The overpayment notice shall only reflect the overpayment amounts for September 2011 and January 2011 only, which total \$2,049.41 (\$693.36 + \$1356.05). The agency shall take steps to do this within ten days.

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 19th day of December, 2012.

\sMayumi M. Ishii
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 December 19, 2012.

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