



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCO/144781

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to overpayments of Child Care benefits, a telephone hearing was held on November 20, 2012, at Milwaukee, Wisconsin. At the request of both parties, the record was held open for 10 days for the submission of additional information.

The issue for determination are: **(1) Whether the county agency correctly determined that the petitioner was overpaid \$10,209.46 in Child Care Benefits in the period of January 17 – July 31, 2010; (2) Whether the county agency correctly determined that the petitioner was overpaid \$4,975.70 in Child Care Benefits in the period of January 2 – December 31, 2011; and (3) Whether the county agency correctly determined that the petitioner was overpaid \$729.05 in Child Care Benefits in the period of January 8 – July 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: Keisha Love
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
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 Benefits assistance group in at least the periods of January 17 – July 31, 2010; January 2 – December 31, 2011; and January 8 – July 31, 2012. During all three of these time period she had reported to the Department that her husband (and later, ex-husband) [REDACTED] was out of the family home.
2. On or about October 4, 2012, the Department issued to the petitioner three Child Care Overpayment Notices, with worksheets and duplicate copies mailed to [REDACTED] at the same residence address, informing both that they had been overpaid in three claim periods a total of \$53,505.42 in Child Care benefits between January, 2010, and August, 2012, due to inadvertent household error in failing to report accurate household composition. The agency had determined [REDACTED] had been in the petitioner's home in these three time periods. See, Exhibit #2, Attachment A.
3. On October 24, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Child Care overpayments described in Finding of Fact #2, above.
4. On November 13, 2012, the agency reviewed the petitioner's case file and issued three amended Child Care Overpayment Notices and worksheets to the petitioner and her husband (and current household member), [REDACTED]. The first notice informed the couple that the Department had determined that the household had been overpaid \$10,249.46 in Child Care Benefits in the period of January 17 – July 31, 2010. The second notice stated that the Department had determined that the household had been overpaid \$4,975.70 in Child Care Benefits in the period of January 2 – December 31, 2011. The third notice stated that the Department had determined that the household had been overpaid \$729.05 in Child Care Benefits in the period of January 8 – July 31, 2012. All three overpayments were determined to have been due to inadvertent household error in failing to accurately report household composition, i.e., because at least one parent in the household was not working or in approved W-2 activities and was therefore otherwise available to provide child care, rendering the household ineligible. See, Exhibit #2, Attachment A.
5. [REDACTED] moved out of the petitioner's residence household in mid-January, 2010, and the petitioner reported this fact to the Department.
6. [REDACTED] was in an auto accident on July 25, 2010, and hospitalized until September 28, 2010, when he was discharged apparently to the care of his mother. His mother and he lived at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] together thereafter from September 28, 2010, through approximately July 28, 2011.
7. [REDACTED] was residing in the petitioner's household effective August 1, 2011, and thereafter, by her own admission.
8. The petitioner's household, including her husband [REDACTED] as a member, had two parents in the periods of August 1, 2011 – December 31, 2011, and January 8 – July 31, 2012, and during these time periods at least one parent was not in any approved W-2 activities or working, and was available to provide care to children.

DISCUSSION

Background Law

Wis. Stat. § 49.195(3), states 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 at Wis. Stat. § 49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the Wisconsin Administrative Code. 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 or whose error caused the overpayment. Wis. Admin. Code, §DCF 101.23(1) (g). Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. Also see, *Wisconsin Shares Child Care Assistance Manual*, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, the Department agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The Department must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the Department’s claim. The Department, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

(1) Whether the county agency correctly determined that the petitioner was overpaid \$10,209.46 in Child Care Benefits in the period of January 17 – July 31, 2010.

The Child Care Benefit subsidy program’s authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the eligibility criteria, then Child Care Benefits cannot be granted. The agency asserts that the unemployed father’s presence in the home made Child Care Benefits unnecessary. Free child care could have been provided by the unemployed parent. 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)(ge)[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.

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8.

The petitioner testified that [REDACTED] was no longer living with her during the period of January – July, 2010, as he had moved out because the couple was having difficulties.

Other evidence supports this testimony. The agency produced Case Comments that reflect that on January 21, 2010, [REDACTED] was reported by the petitioner to have moved out, and he was removed from the case. See, Exhibit #2, attachment B, Case Comments. In addition, the petitioner started a divorce action against [REDACTED] in May, 2010. See, Exhibit #3, attachment E, CCAP record. [REDACTED] had a serious auto accident on July 25, 2010, and was hospitalized until September 28, 2010. See, Exhibit #3, attached Froedtert Memorial Lutheran Hospital Patient Notes.

I have reviewed the evidence in this record. There are multiple points of address and residence for both [REDACTED] and [REDACTED], spanning several years, and multiple government databases. The agency had every right to have suspicions about this couple's ultimate living arrangement, given the kaleidoscopic nature of their reported addresses. Stable and concurrent residential evidence is just not really in this record. It certainly gives rise to questions about the couple's residence histories. But the agency really has not added very much to the record to show that [REDACTED] was in the petitioner's home in the now remote period of January – July, 2010. Rather, much of the most credible evidence is of recent vintage showing that the couple really is back together now. And [REDACTED] concedes that this is so. I am persuaded by the preponderance of the evidence that the Department has not made a prima facie showing that [REDACTED] was in the home in this test period, and I am persuaded by the agency corroboration of the petitioner's testimony, i.e., the Case Comment of January 21, 2010, that he was reported to have moved out to the Department; and by the ACCESS application of July 28, 2011, showing that he was again claiming to be at the same address as the petitioner. In addition, this view of the facts is supported by the Case Comments from mid-2010 showing the report to the Department of [REDACTED]'s accident, and his hospitalization for an extended period; and the medical records demonstrating that he was reporting he was living at his mother's home on [REDACTED] in the time frame of July 25, 2010, through March 16, 2011. These documents are really the best evidence demonstrating that [REDACTED] was out of the home during January – July, 2010. Accordingly, I conclude that this overpayment must be rescinded in its entirety.

(2) Whether the county agency correctly determined that the petitioner was overpaid \$4,975.70 in Child Care Benefits in the period of January 2 – December 31, 2011.

It is clear at a minimum that the husband/parent was in the home and available to provide cares during at least the period of August – December, 2011, by the petitioner's own admission that he was living with her and her children beginning in August, 2011. No evidence proffered by her contradicts the agency determination that a parent was available beginning in at least August, and through December, 2011, in this second overpayment period. And the agency did not assess overpayments in April, June, July, August, September & October, 2011. See, Exhibit #2, Attachment A, Notice of November 13, 2012, CCO Claim No. [REDACTED] attached Worksheet. Rather, the agency established that the co-parent was in the home in at least November & December, 2011, by the petitioner's admission, and no more is required. Clearly, she was overpaid Child Care Benefits for November – December, 2011. Wis. Stat. §49.155(1m)(a). The agency did not find any overpayment for June – October, 2011; or in April, 2011, either.

This leaves the beginning part of this period, January – March; and May, 2011, as the months overpayments were found to have existed, in controversy in the second tested period.

The petitioner testified, as noted above, that she filed divorce in May, 2010. This is corroborated by CCAP divorce records. See, Exhibit #3. Subsequently, she also testified that her husband had a serious motor vehicle accident on July 25, 2010, and he was hospitalized until discharge on September 28, 2010. This is also corroborated by hospital records. See, Exhibit #3, attached Froedtert Memorial Lutheran Hospital discharge notes. Clearly, [REDACTED] identified to his medical providers that [REDACTED] [REDACTED] [REDACTED] (his mother's address) was his residence at discharge. Now the divorce action was dismissed on October 25, 2010, for lack of prosecution by either party. See, Exhibit #3. Subsequently, follow-up medical treatment for [REDACTED]'s injuries took place on March 16, 2011, with Abalo Nunyakpe, MD, at which [REDACTED] again indicated the same [REDACTED] [REDACTED] address as his address. See, Exhibit #3, attached Patient Note. This [REDACTED] address was also reported by [REDACTED] to the IV-D enforcement agency as his mailing address, per an update on February 9, 2011. See, Exhibit #3, KIDS Participant Address List. Finally, it also appears of record in [REDACTED]'s SSI federal data as his residence, as late as March, 2012. See, Exhibit #2, attached SSI Data Exchange Payment Details screen. The first point in time I can discern where evidence indicates that [REDACTED] is back in the same home with [REDACTED] is his ACCESS application of July 28, 2011, when he again identifies the petitioner's Mohawk address as his. See, Exhibit #2. Quizzically, he asserts in this application that he is homeless, and yet provides his wife's address and a phone number as his on this application. After this point in time, multiple documents show that he was again living with [REDACTED] like the recall petition, a new September, 2011, driver's license, etc., as well as the petitioner's own admission.

I have reviewed the voluminous evidence presented by both parties in detail. As to this period of time, the best evidence seems to be that [REDACTED] was residing at [REDACTED] [REDACTED] with his mother until July 28, 2011. There is a great deal of information here demonstrating that [REDACTED]'s address was different things to different agencies at different times, and the agency had every reason to have some suspicions. But suspicion is not enough. The evidence is internally inconsistent and on the whole tends to the conclusion that [REDACTED] was living with his mother during a lengthy convalescence period. That part of the overpayment arising in January, February, March & May, 2011, is in error and is to be rescinded on remand.

(3) Whether the county agency correctly determined that the petitioner was overpaid \$729.05 in Child Care Benefits in the period of January 8 – July 31, 2012.

The petitioner admitted during the hearing that [REDACTED] was residing in her household at all times during this overpayment period. At no time did she contest the computations of the household's eligibility for Child Care Benefits, [REDACTED]'s income streams, or her own, for this time period. Based upon the preponderance of the uncontroverted evidence presented by the agency of the household's composition and income in the period of January 8 – July 31, 2012, as shown in Exhibit #2, attachments A, D, E & G, the \$729.05 overpayment claim must be sustained. The petitioner provided no rebuttal whatsoever as to this small claim, and it is established.

CONCLUSIONS OF LAW

- 1) The Department has not established by the preponderance of the evidence in this record that the petitioner's husband, [REDACTED] [REDACTED] was residing in her Child Care household in the periods of

January 1 – July 30, 2010, or January – March, 2011, and May, 2011; Child Care overpayments for these periods must be rescinded, and new amended Notice be sent to the petitioner.

- 2) The Department has established by the preponderance of the evidence in this record that [REDACTED] [REDACTED] was residing in the petitioner's residence in the periods of November & December, 2011, and January 8 – July 31, 2012, and the parts of the overpayments found are sustained for these periods during which she was ineligible for Child Care Benefits due to an available caretaker parent in the home.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department with instructions to: rescind all Child Care overpayments of record against the petitioner for the periods of January 1 – July 30, 2010, January – March, 2011, and May, 2011, and cease recovery efforts as to these months; prepare and issue a written amended Child Care Overissuance Notice reflecting these stated rescissions, and restating the overpayment amounts sustained herein for the periods of November – December, 2011, and January 8 – July 31, 2012, with a copy to both [REDACTED] and [REDACTED]. **IT IS FURTHER ORDERED**, that the agency shall take all actions necessary to correct the claims records as to this household to reflect this ORDER. These actions shall be completed within 10 days of the date of this Decision.

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 18th day of December, 2012

\sKenneth D. Duren, Assistant Administrator
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 18, 2012.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Child Care Fraud