



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCO/143796

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to Child Care benefits, a hearing was held on December 5, 2012, by telephone. A hearing set for November 7, 2012, was rescheduled. The hearing record was held open for 10 days for a submission regarding wage verification, which was received from the county.

The issue for determination is whether the petitioner was overpaid Child Care (CC) benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Lynn Brenner, ES Supr.

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner applied for CC benefits and was issued CC authorization for his two minor children, MaK and MiK, on or before July 31, 2011. CC benefits totaling \$3,036.05 were paid to their daycare provider for the July 31 – October 31, 2011, period. See, Exhibit 2, payments.
3. In April 2012, the agency received a computer cross-match from the petitioner's employer's report to the Wisconsin Department of Workforce Development. The employer reported that the petitioner was paid more than the CC program's income limit for the months of August through October 2011. The agency later obtained a Request for Employment Information form from the petitioner's employer, [REDACTED], [REDACTED] payroll officer ([REDACTED]) declared that the petitioner was paid \$14.89 per hour, and that his gross wages were as follows: \$4,130.28 in July 2011, \$3,317.55 in August 2011, \$3,741.89 in September 2011, \$4,436.96 in October 2011, and \$3,508.88 in November 2011.
4. The gross income limit for the petitioner's household size in 2011 was \$3,088. On May 2, 2012, the agency issued a *CC Overpayment Notice* to the petitioner at an address of [REDACTED]. The *Notice* advised that he was overpaid \$3,038.05 in CC from July 31 through October 31, 2011, due to excess earned income.

DISCUSSION

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

In this case, the petitioner does not contest several things. He does not quarrel with the agency's arithmetic in the overpayment calculation, and he does not contest that he took his children to daycare, that the CC program made the identified payments to the daycare, or that he was employed at [REDACTED] during the overpayment period. The petitioner did not produce any evidence to suggest that the income information received by the county agency from the employer was incorrect. He argued that he did not receive the amount of gross income listed by the employer. If the petitioner's \$14.89 hourly rate is multiplied by the 30 hours weekly that the petitioner claims to have worked, his income would have been under the CC program's income limit. However, the employer has consistently reported to the Department of Workforce Development and the county agency that the petitioner was paid gross wages that exceeded \$3,038.05 for the months in question. Based on the documentation before me, I conclude that the petitioner was overpaid as alleged.

CONCLUSIONS OF LAW

1. The agency correctly determined that the petitioner was overpaid \$3,038.05 in CC from July 31 through October 31, 2011.

THEREFORE, it is

ORDERED

That the petition is 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 11th day of March, 2013

\sNancy J. Gagnon
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 March 11, 2013.

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