



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/143816

&

CCO/143817

PRELIMINARY RECITALS

Pursuant to petitions filed September 14, 2012, under Wis. Admin. Code § HA 3.03, to review decisions by the Milwaukee County Department of Human Services in regards to overpayments of Child Care Benefits, a telephone hearing was held on December 19, 2012, at Milwaukee, Wisconsin. A hearing set for November 12, 2012, was rescheduled at the petitioners' request.

The issues for determination are: **1) Whether the county agency correctly determined that the petitioners were overpaid \$4,016.42 in Child Care Benefits during the period of May 14 – November, 30, 2011, because both were failing to participate in W-2 assignments; 2) Whether the county agency correctly determined that the petitioners were overpaid \$582 in Child Care Benefits in the period of February 12 – March 31, 2012, because [REDACTED] was enrolled in W-2 but failing to participate and [REDACTED] was not enrolled but available to provide care to their child-in-common.**

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:

[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:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioners [REDACTED] and [REDACTED] are residents of Milwaukee County; they were living together with their child-in-common, [REDACTED] during the periods of May 14 – November 30, 2011; and February 12 – March 31, 2012.
2. At all times during the two time periods described in Finding of Fact #1, above, [REDACTED]'s child care provider was reimbursed on an enrollment basis for his care needs as a member of his parents' household. See, Exhibit G.
3. Petitioners were both enrolled in the Wisconsin Works (W-2) Program during the period of May 14 – November 30, 2011, and both were repeatedly and continuously sanctioned for non-participation in the program during this entire period, with sporadic awards of some good cause hours. See, Exhibit H.
4. Petitioner [REDACTED] was enrolled in the Wisconsin Works (W-2) Program during the period of February 12 – March 31, 2012, but she was repeatedly and continuously sanctioned for non-participation in the program during this entire period. During this same period, [REDACTED] was not working and not enrolled in the W-2 Program, and otherwise available to care for [REDACTED] but the child's provider was paid on an enrollment basis for the child's care needs continuously during this time period. See, Exhibit H.
5. Petitioner [REDACTED] worked very sporadically for a total of \$391.54 in wages for two jobs in the 1st Quarter of 2012 (January – March); and \$674.40 in the 3rd Quarter of 2011; with no other wages reported to the Department of Workforce Development in the State Wage Record for 2011. [REDACTED] did not have any wages for either period reported in the State Wage Record. See, Exhibit E.
6. By a notice dated August 6, 2012, the county informed both petitioners that they were overpaid \$582 in child care during the period February 12 – March 31, 2012. The amount was the total paid by the county agency for child care for [REDACTED] during that period.
7. By a notice dated August 22, 2012, the county informed both petitioners that they were overpaid \$4,016.42 in child care during the period May 14 – November 30, 2011. The amount was the total paid by the county agency for child care for [REDACTED] during that period.
8. Petitioner [REDACTED] filed an appeal with the Division of Hearings & Appeals in DHA Case No. CCO-143816, contesting both overpayments described in Findings of Fact #6 & 7.
9. Petitioner [REDACTED] filed an appeal with the Division of Hearings & Appeals in DHA Case No. CCO-143817, contesting both overpayments described in Findings of Fact #6 & 7.
10. The petitioners did not provide any documentary evidence like paystubs or an employer's statement that established that either worked during the two overpayment test periods other than the brief and sporadic employment described in Finding of Fact #5, above.

DISCUSSION

1) Whether the county agency correctly determined that the petitioners were overpaid \$4,016.42 in Child Care Benefits during the period of May 14 – November, 30, 2011, because both were failing to participate in W-2 assignments.

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. Adm. Code, §DWD 12.23. 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. Adm. Code, §DWD 12.23(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 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. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

The petitioners argued that [REDACTED] was working during the periods in question. They also asserted that the child did not go to child care during both periods.

However, neither petitioner produced any meaningful documentation that either had any real meaningful work hours other than two brief periods for a small amount of wages as described in Finding #5, above. Certainly, they did not establish any child care was needed to be able to work for the vast, vast majority of both overpayments. Likewise, [REDACTED] was continuously *enrolled* in the child care, so benefits were being paid on his behalf whether he went every day, or not. No evidence presented by the couple establishes that they ever reported he was no longer attending to the agency or asked the agency to stop his child care reimbursements. See, Exhibits G, E & H.

The problem is that there are no exceptions written into Wis. Stat. §49.155(1m)(a). Child care is available ONLY for working or participating in W-2 activities. I have no choice but to conclude on the preponderance of the evidence in this record that petitioners were overpaid child care during this period because they were not using it for the statutorily mandated reasons. And they have not rebutted the agency case with any credible evidence.

2) Whether the county agency correctly determined that the petitioners were overpaid \$582 in Child Care Benefits in the period of February 12 – March 31, 2012, because [REDACTED] was enrolled in W-2 but failing to participate and [REDACTED] was not enrolled but available to provide care to their child-in-common.

I also reach the same conclusion for this separate period of time, albeit for a slightly different reason. Here, [REDACTED] was shown to be not participating in her assigned W-2 activities, while [REDACTED] was neither enrolled in W-2 or working. Again, [REDACTED] was continuously enrolled, so child care benefits were paid on his behalf. The petitioners have not rebutted the agency finding with any credible evidence that either was working full time or participating in all assigned W-2 activities. Also, they did not establish or even allege that they had reported [REDACTED] was no longer attending child care. Under these facts, this overpayment claim is also established by the preponderance of the evidence.

The petitioners' appeals must both be dismissed.

CONCLUSIONS OF LAW

Petitioners were overpaid child care funds of \$4,016.42 (May 14 – November 30, 2011) and \$582 (February 12-March 31, 2012) because they were not working or attending W-2 activities while utilizing the child care; had not reported that their child no longer needed child care; and one of them was available at all times during the two overpayment periods to provide child care to [REDACTED]

NOW, THEREFORE, it is ORDERED

That the above numbered petitions for review herein be and the same are 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 7th day of January, 2013

\sKenneth D. Duren, Assistant Administrator
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 January 7, 2013.

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