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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCO/144017

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 21, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on December 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overissued child care benefits.

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: Destiny Cooper  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a notice dated August 30, 2012, that informed Petitioner that he had been overissued child care benefits in the amount of \$3,862.00 for the time period of February 6, 2011, through August 31, 2011.

3. The agency bases this overpayment on its contention that petitioner and [REDACTED] [REDACTED] worked, at times, separate shifts allowing one of the parents to be home to provide child care.

### DISCUSSION

Petitioner and [REDACTED] [REDACTED] at all times material hereto, were the parents of two children. Following an overpayment determination by respondent in early 2012, [REDACTED] [REDACTED] filed an appeal of the assessed overpayment. In a decision dated August 23, 2012, Administrative Law Judge David D. Fleming remanded this matter to the respondent to review and redetermine the overpayment, taking into account paystub information presented by [REDACTED] [REDACTED] at hearing. Following that review and redetermination, the respondent issued a new overpayment notice, decreasing the amount of assessed overpayment from 11,795.361 to \$3,862.00.

As noted by Judge Fleming:

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §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). Adm. Code. 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.

All parents must be participating in an approved activity in order to receive child care assistance. Wisconsin Shares Child Care Assistance Manual, §1.4.8. Further, if one parent is home while the other parent is working that parent is expected to watch the child(ren) and child care assistance is not available, it is to say, the childcare is only available for a two-parent household where work schedules overlapped. Wisconsin Shares Child Care Assistance Manual, §1.4.8.2. Finally, a person must be working for qualified employer which includes a requirement that the employer pay the minimum wage in order to receive child care benefits. Wisconsin Shares Child Care Assistance Manual, §1.5.3.1.

Generally speaking, to successfully establish an overpayment claim, the county 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 agency 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 agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

*In the Matter of* ██████████ ██████████, DHA Hearing No. CCO/139266 (pp 2-3).

At hearing, petitioner did not contest the respondent's calculations, but questioned the respondent's failure to consider any transportation time in determining the overpayment. Respondent countered that, during the first six months that a parent is engaged in a new self-employment business, the agency may authorize care for the hours the parent is engaged in self-employment work. See, *Child Care Assistance Manual (Manual)* § 3.6.1.2, Authorizations for Self Employment. Respondent reasons that this language does not include a provision allowing for consideration of transportation time, and furthermore, hours allocated for transportation must be documented in CARES Worker Web in case comments, on the employment page, or in the Electronic Case File to substantiate the need for the child care assistance hours authorized. No transportation hours were documented. Therefore, only the hours during which the parent is "engaged in self-employment work" qualifies.

I must agree. Eligibility for child care is only for the overlapping hours when both parents are in approved activities. *Manual* § 1.4.8.2. The lack of documentation of transportation hours renders the respondent incapable of substantiating the need for such authorization, even assuming, *arguendo*, that consideration of transportation time was appropriate. Petitioner has failed to establish that the respondent incorrectly excluded transportation time in establishing the amount of the overpayment here.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid child care assistance due to agency error.

**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 8th day of January, 2013

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\sPeter McCombs  
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 8, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Child Care Fraud