FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/144084

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 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 petitioner was overissued $33,791.97 in Child Care benefits which are subject to recovery.

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

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner received Child Care benefits for petitioner's minor children under the auspices of the Wisconsin Works program during various months from 2009 through 2012.

3. Petitioner and [redacted] have one child in common.

4. Based upon an investigation into whether or not petitioner was residing with Mr. [redacted] the respondent determined that petitioner and Mr. [redacted] lived together during various months between 2009 and 2012.

5. While allegedly residing together, the respondent maintains that Mr. [redacted] was not participating in W2 activities.

6. The respondent established the following overpayment claims:

[redacted]	11/01/09-04/30/10	$ 6,914.77
[redacted]	06/06/10-05/31/11	$16,198.18
[redacted]	06/05/11-10/31/11	$ 7,372.19
[redacted]	01/01/12-03/31/12	$ 3,306.83

7. Petitioner timely appealed the respondent's determination that she and Mr. [redacted] resided together during the time periods at issue here.

DISCUSSION

Wis. Stat. § 49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat. § 49.155(1m). As such, W-2 child care assistance is a type of Wisconsin Works benefits. The department has a *Child Day Care Manual* that provides the specific activities, policies and eligibility requirements (including a discussion of income limits and other non-financial requirements) to qualify for the program. http://www.dwd.state.wi.us/dws/programs/childcare/wishares/manual.htm .

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3).

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

In this case, the county worker presented a well-documented case and proved by a preponderance of the evidence that petitioner failed to report that the she was residing with the father of one of her children, [redacted], between 2009 and 2012. As it was never reported that she was residing with Mr. [redacted], his involvement in approved activities, or lack thereof, was not considered to determine Child Care benefits during the relevant period of time which, in turn, gave rise to the overpayment.

At the hearing, petitioner testified that she and Mr. [redacted] had not lived together during the claimed overpayment time periods. She also explained that she and Mr. [redacted] simply used the same address for mailing purposes, and that that address belongs to Mr. [redacted]s mother. Petitioner testified that Mr. [redacted] is unstable and occasionally violent; in fact she has recently filed a restraining order against him. Petitioner concedes that Mr. [redacted] did live with her for a "short time" in 2009, but she was unable to specifically provide dates that they resided together. In any event, she testified that he never stayed for more than a week,

The respondent countered that Mr. [redacted] was not employed and that he used the same address as petitioner, which is the address of Mr. [redacted]s mother. As an unemployed individual, he was not participating in "approved activities." Therefore, respondent concluded that an overpayment of Child Care benefits had occurred.

I find petitioner's testimony that she and Mr. [redacted] lived separately to be non-persuasive and contradicted by the basic facts and evidence presented by the respondent. Petitioner and Mr. [redacted]have represented on various occasions that each has lived at the same addresses for all practical, and some rather important, purposes such as court proceedings. The testimony provided by petitioner demonstrates a less than stable relationship, but does not substantiate separate residencies during the time periods at issue here. The respondent has demonstrated, by a preponderance of the evidence, its reasonable conclusion that petitioner and Mr. [redacted]were residing together during the claimed overpayment periods.

This is a close case. While I find certain testimony provided by petitioner to be credible, when weighed against the documented evidence of the residencies claimed by Mr. [redacted]and petitioner, I am unable to conclude that the respondent erred in determining that Mr. [redacted]and petitioner were living together. Petitioner did not provide any corroborating testimony or other evidence to establish her version of events, and she conceded that she and Mr. [redacted]did, in fact, live together on occasion, albeit short-term. However, the respondent has an obligation to ascertain the propriety of Child Care benefits, and in the present case, based upon the best information available, I find that the respondent properly determined that petitioner and Mr. [redacted]were residing together during the claimed overpayment periods.

Based upon all of the above, I conclude that petitioner was overissued $33,791.97 in child care benefits which are subject to recovery.

CONCLUSIONS OF LAW

Petitioner was overissued child care benefits which are subject to recovery in the following claims:

1.	[redacted]	11/01/09-04/30/10	$ 6,914.77
2.	[redacted]	06/06/10-05/31/11	$16,198.18
3.	[redacted]	06/05/11-10/31/11	$ 7,372.19
4.	[redacted]	01/01/12-03/31/12	$ 3,306.83

NOW, THEREFORE, it is **ORDERED**

That the matter herein be and 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 County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud