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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCO/145434

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Kenosha County Human Service Dept. to recover child care, a hearing was held on February 5, 2013, by telephone.

The issue for determination is whether petitioner was overpaid child care because her husband was not working in approved employment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Karen Mayer  
Kenosha County Human Service Dept.  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. In 2012 petitioner received child care assistance for her two children. In March she reported and verified that she had gotten married on March 14, 2012. In early April she verified that both she and her husband were employed, and child care was authorized effective April 1.
3. During a review questions about petitioner's husband's employment arose. It was discovered that the employer did not have a federal identification number (FEIN) and that petitioner's husband

was being paid cash. No wages were being reported to the state by the employer. Child care was closed following those disclosures.

4. The county determined that petitioner was ineligible for child care for the period April 1 through October 31, 2012. By a notice dated November 9, 2012, the agency informed petitioner that she was overpaid \$5,506.10 in child care during the period due to agency error, claim no. [REDACTED]

### DISCUSSION

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. 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. Wis. Admin. Code, §DCF 101.23(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 Wisconsin Works (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. If both parents, including step-parents, are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1). 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 issue in this case is that petitioner's husband's employment was not considered to be approved. The Manual, §1.5.3, provides that only two types of employment are approved: working for an employer that has an FEIN, or being "legitimately" self-employed. During the period in question petitioner was not alleged to be self-employed, but employed. The problem is that after petitioner reported her marriage, an Employer Verification Form was filed for her husband and the worker accepted it without looking into the employer's status. It was only at a review six months later that it was discovered the no income was being reported for petitioner's husband to the state, and the lack of an FEIN was found.

While I understand petitioner's frustration with getting hit with a \$5,500 overpayment claim, the state's rules for child care subsidies require recovery even in cases where the overpayment was caused by agency error. Petitioner complained that the error should not have lasted for seven months and that she tried to clear up the situation for a long time, but I see nothing in the case notes that she was questioning her husband's work situation, at least prior to the overpayment investigation. Even if petitioner did try to clear up the matter during the period after April 1, the agency still has to recover the money because petitioner's husband's job was not approved for the period.

**CONCLUSIONS OF LAW**

Petitioner was overpaid child care assistance due to agency error because her husband's employment was not approved for authorization purposes.

**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 Milwaukee,  
Wisconsin, this 27th day of February, 2013

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\sMichael A. Greene  
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 February 27, 2013.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud