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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCO/145547

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to Child Care, a hearing was held on January 03, 2013, at Fond Du Lac, Wisconsin. The record was held open 10 days to allow for the submission of additional information, which was timely received.

The issue for determination is whether petitioner is liable for an overpayment of Child Care benefits in the amount of \$1,345.25, pertaining to the time period of May 29, 2011, through May 5, 2012.

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: Deb Bohlman

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County who resides with his wife and their minor child. Petitioner shares custody of his three other children.

2. The petitioner applied for renewal of Child Care (CC) benefits on or about April 8, 2011. Petitioner's wages from [REDACTED] were verified via an Employer Verification of Earnings form (EVFE), and his wife's earnings were verified via paystubs. Exhibit 5.
3. The county agency made child care payments totaling \$1,522.98 to petitioner's child care provider during the overpayment period of May 29, 2011, through May 5, 2012. Of the total payments made, respondent determined that \$1,345.25 constituted an overpayment. Exhibit 5.
4. Petitioner's group size increased to 4 with the addition of petitioner's son in November, 2011.
5. Actual wage records indicate the following gross earned income for the petitioner and his wife:
 

June, 2011	\$5,540.29
July, 2011	\$9,003.14
August, 2011	\$6,876.53
September, 2011	\$7,165.73
October, 2011	\$4,482.76
November, 2011	\$3,415.59
December, 2011	\$4,993.98
January, 2012	\$3,946.55
February, 2012	\$3,098.85
March, 2012	\$4,876.53
April, 2012	\$3,629.47
6. Petitioner failed to timely report to the county agency overtime pay that he earned during the overpayment period. Respondent determined that petitioner was not eligible for any CC benefits due to petitioner's household income exceeding program limits from May 29, 2011 – October, 2011, December, 2011 – January, 2012, and for March of 2012. The household was found to have exceeded the income reporting requirement, but remained eligible for certain CC benefits in November of 2011 and April of 2012. No overpayment was assessed for February, 2012. Exhibit 5.
7. On October 11, 2012, the county agency issued a Child Care (CC) Overpayment Notification to the petitioner, advising that he had been overpaid \$1,345.25 during the period of May 29, 2011, through May 5, 2012. Exhibit 3.

## DISCUSSION

### I. JURISDICTION.

All child care 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). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development (the responsible agency at the time) changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

## II. A RECIPIENT MUST REPAY A CHILD CARE OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

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 is available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

## III. AN OVERPAYMENT OCCURRED, DUE TO PETITIONER'S FAILURE TO TIMELY REPORT HIS OVERTIME INCOME RESULTING IN INCOME ABOVE THE CHILD CARE INCOME LIMITS.

The Child Care Benefits program requires the use of the prospective budgeting test, which usually treats income by a multiplier to reflect estimated income for an average month that is 4.3 weeks long. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.6. However, when income fluctuates, an average is to be used to arrive at monthly income. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.7. The average to be used is not limited to one month under this policy. *Ibid*. In addition, all earned income including overtime pay is included in determining child care income eligibility. The petitioner's household average monthly income was \$5,184.49 during the period in question.

**The income limit for an ongoing case is 200% of the federal poverty level ("FPL").** The income limit for a new request case is 185% of the federal poverty level (FPL). Financial eligibility ends when a household exceeds this limit for two consecutive months. *Ibid*, § 1.6.3. 200% of the FPL was \$3,088.00 for a three person household, and \$3,725.00 for a four person household (this increased to \$3,842.00 in March of 2012). *Wisconsin Shares Child Care Assistance Manual*, § 1.6.3.

During the January 3, 2012, hearing and while the record was held open, the county agency representative, presented a strong case that petitioner received CC benefits in excess of that for which he was eligible, due to petitioner's failure to report to the county agency his overtime income resulting in total household income above the child care income eligibility limits. The petitioner did not contest the veracity of the wage amounts determined by respondent, as confirmed by State Wage records as stated in Finding of Fact 5, above.

Petitioner argued that he submitted all of the information requested of him, and never attempted to hide anything. He testified that his employer offers overtime on a last-minute basis, so it is impossible for him to ever estimate if he will even be provided overtime opportunities. Respondent counters that petitioner was notified numerous times of his reporting responsibilities, i.e., recipients of CC benefits are required to report changes no later than 10 calendar days after the change. While it may not be uncommon for such standard language to pass overlooked on agency form letters, it is, nonetheless, a requirement of the CC program. See, Wis. Adm. Code § 201.04(2m). Petitioner indicated that he feels that there was nothing that he could have done to prevent this overpayment from occurring, but that ignores the fact that he had received numerous notices from the respondent indicating the income that was being counted for his household, and furthermore he was obviously aware that he was working a good deal of overtime. It would appear that on at least 4 occasions, his monthly household income was at least double the amount that was being utilized by the respondent.

Petitioner also raised the issue of having full time placement of his three additional children, while their mother was incarcerated. Electronic Case Comments indicate that petitioner's wife called to report the children in their care, in April of 2010. Despite certain efforts, respondent was unable to verify the placement of the children or the fact that their mother was in jail. Petitioner never followed up with the submission of any proof regarding the placement, and in any event, this occurred in 2010, approximately one year prior to the commencement of the overpayment period at issue here.

Finally, petitioner argues that he simply cannot afford to repay the overpayment assessed against him. I can empathize with his situation, and agree that there is no evidence of any intentional effort to obtain CC benefits unlawfully. I certainly understand that addressing this debt can be difficult, and even impossible. However, administrative law judges do not have the power to address issues of equity. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. We are required to apply the law as written.

Based on the above hearing record, I conclude that the county agency is correctly seeking repayment of a child care overpayment to the petitioner in the total amount \$1,345.22 during the period of May 29, 2011, through May 5, 2012, due to his failure to report to the county agency his overtime income resulting in total household income above the child care income eligibility limits

### **CONCLUSIONS OF LAW**

The county agency is correctly seeking repayment of a child care overpayment to the petitioner in the total amount \$1,345.22 during the period of May 29, 2011, through May 5, 2012, due to his failure to report to the county agency his overtime income resulting in total household income substantially above the child care income eligibility limits.

**THEREFORE, it is**

**ORDERED**

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 12th day of February, 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 February 12, 2013.

Fond Du Lac County Department of Social Services  
Public Assistance Collection Unit  
Child Care Fraud