



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/145603

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 29, 2012, under Wis. Stat. §§ 46.85 and 227.44; Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department determining that Petitioner had been overissued child care benefits, a hearing was held on April 25, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits from Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The agency sent Petitioner two Child Care Overpayment Notifications, both dated November 9, 2012, that informed Petitioner that he had been overissued child care benefits in the total amount

of \$6734.83 for the time period from October 31, 2011 to November 30, 2012. Claim #s [REDACTED] and [REDACTED].

3. The child care benefit overissuance involved here was a result of nonclient error. Petitioner's child care benefit was approved but the agency later realized that the employer was not a qualified employer as that term is used by the Wisconsin Shares Child Care program.
4. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.

### DISCUSSION

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 (Manual), §2.3.1.*

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.

Finally, relevant here, is the requirement that a person is eligible for child care only if the person is participating in an approved activity. *Manual, § 1.4.8*. Employment is an approved activity only as follows:

#### **1.5.3 Unsubsidized Employment**

Work in an unsubsidized job, including training provided by an employer during the regular hours of employment. Subsidized employment is not considered an approved activity for Wisconsin Shares child care subsidy, including Transitional Jobs that are not a work experience as part of a FSET Employment Plan.

The Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting non-financial eligibility criteria and for receiving assistance as either:

- 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
- 2) Being legitimately self-employed.

All hours per week of unsubsidized employment, the schedule shift if second or third, and 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. Indicate if the hours vary on a weekly basis.

Documenting employment schedules is required for both types of unsubsidized employment: working for a qualified employer or legitimate self-employment. If a qualified employer has provided verification of the individual's hours per week of employment there is no need for them to also provide verification of a work schedule unless the worker finds the employment questionable.

The program definitions for "qualified employers" and "legitimate self-employment" are described below and reflect current Wisconsin Wage and Unemployment Insurance law:

#### **1.5.3.1 Qualified Employers**

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete.

If the FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.

Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews).

Children of parents who are employed by certified child care providers are not eligible for an authorization at the child care provider where their parent is employed.

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.

- The employer must have a Worker's Compensation insurance policy for its employees unless legally exempt.
- The employer must comply with Wisconsin minimum wage law for all employees.
- The employer must file a New Hire report on the employee within thirty days of the hiring date.
- The employer must report wages to Unemployment Insurance unless exempt.

*Manual, §§1.5.3 and 1.5.3.1.*

Here Petitioner notes that he was working, reporting that employment as required and was approved for child care by the agency. He indicated that he tried to get a FEIN from the employer when he learned that it was a problem here but without success. He was paid in cash and did not file income tax returns for the employment.

The problem here is that there is no evidence of qualified employment. The employer has no Federal Employer Identification Number. Petitioner has no tax return(s) to show that he could be considered to be self-employed. Without any proof of participation in an approved activity as defined by the child care program there was no child care eligibility. Even though, without this proof, the agency approved the child care in error, the law and policy noted above requires recovery.

### **CONCLUSIONS OF LAW**

That Petitioner was overpaid child care benefits in the amount of \$6734.84 for the period from October 31, 2011 through November 30, 2012 as a result of nonclient error, nonetheless, the agency is obligated to recover the overpayment.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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 28th day of May, 2013

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\sDavid D. Fleming  
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 May 28, 2013.

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