



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/145647

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration (MECA) in regard to Child Care, a telephonic hearing was held on February 20, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for one month for the submission of consecutive closing arguments to the Division of Hearings and Appeals (DHA). The county representative timely submitted her closing argument to DHA which is received into the hearing record. The petitioner failed to submit any responsive closing argument to DHA within one month, or even by the date of this decision.

The issue for determination is whether the Department is correctly seeking recovery of child care (CC) overpayments to the petitioner totaling \$12,977.64 during the period of July, 2011 to October 31, 2012, due to failure to timely report earned income or under-reporting income resulting in child care ineligibility due to household income above the child care income eligibility limits.

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: LaReina Horton, child care specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides with her two children.
2. The petitioner received Child Care (CC) benefits for her two children for the entire period of July 1, 2011 to October 31, 2012.
3. The Milwaukee county agency discovered that petitioner's earned income from all of her many employers had not been fully and timely reported by the petitioner to the county agency.
4. On November 28, 2012, the county agency sent a written Notification of Child Care (CC) Overissuance to petitioner informing that she was overissued \$7,478.87 in CC benefits from July 1, 2011 to November 30, 2011, due to petitioner's failure to report fully and timely her earned income resulting in household income above the CC income eligibility limits.
5. On November 28, 2012, the county agency sent a written Notification of Child Care (CC) Overissuance to petitioner informing that she was overissued \$5,498.77 in CC benefits from January 1, 2012 to October 31, 2012, due to petitioner's failure to report fully and timely her earned income resulting in household income above the CC income eligibility limits.
6. The petitioner's total child care overpayment was \$12,977.64 during the period of July, 2011 through October, 2012.
7. The petitioner failed to timely and fully report to the county agency her earned income from [REDACTED], [REDACTED], [REDACTED], or [REDACTED].
8. The petitioner failed to timely and fully report to the county agency all her changes in income due to overtime pay earned.
9. The Child care gross income limit for a household of three was \$3,088 during 2011, and then increased to \$3,182 for 2012.
10. The petitioner's monthly household income (total household income) was above the child care (CC) gross income eligibility limits for the petitioner's entire CC overpayment period.

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 changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0.

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. Adm. 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. Adm. Code, §DCF 101.23(1)(g).

II. THE PETITIONER WAS INELIGIBLE FOR CHILD CARE PAYMENTS DURING ALL THE PERIOD OF JULY 1, 2011 TO OCTOBER 31, 2012, DUE TO INCOME ABOVE THE CHILD CARE INCOME ELIGIBILITY 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*. 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. Financial eligibility ends when a household exceeds this limit for two consecutive months. *Ibid*, § 1.6.3. The gross income limit for petitioner’s household three is set forth in Finding of Fact # 9 above for the entire 2011 and 2012 overpayment periods. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.3. The petitioner’s household income was above the income limit for the entire overpayment period.

During the hearing and in its extensive Exhibits, the county agency presented a well-documented case that it was correctly seeking from the petitioner a child care overpayment for the period of July, 2011 through October, 2012.

III. THE AUTHORITY TO ADMINISTRATIVELY RECOVER CHILDCARE OVERPAYMENTS

It makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency’s error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must generally be recovered even if it was caused by agency error.

This is also reflected in the applicable overpayment rule, Wisconsin Administrative Code §12.23(1)(g), (3)(a), which states in pertinent part:

DWD 12.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) “Overpayment” or “debt” means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

...

(2) OVERPAYMENT DETERMINATION AND NOTICE. (a) A county ... shall determine whether an overpayment has been made under s.49.148, 49.155, 49.157, or 49.19, Stats., and if so, the amount of the overpayment. ...

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital coparent, or stepparent whose family receives benefits under s.49.148, 49.155, 49.157 or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. ...

DCF 101.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

The Child Care Manual states there are 3 types of overpayments:

2.3.1 Client Overpayments

Agencies administering child care shall take all steps necessary to recoup or recover, from the parent, funds paid to the child care provider when the parent was not eligible for the level of benefits paid.

There are 3 types of overpayments:

1. **Client/Provider Error. The client or provider report incorrect information or fail to report information. Intentional Program Violation is not established.**
2. Administrative Error. Overpayment results from agency or system error. The agency commits an error or the system calculates an authorization or payment amount for more than the client was entitled. Can only recover 12 months prior to discovery of the overpayment. The original Overpayment Notice date is the date of discovery.
3. **Intentional Program Violation.** The client or provider willfully reports information or fail to report information in order to receive more benefits, and as a result is found guilty of IPV by the court, ...

(Emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that petitioner failed to timely and fully report her earned income from her many employers, and thus that full income had not been used to determine her CC eligibility which, in turn, gave rise to the CC overpayments during the period of July, 2011 to October 31, 2012. The county representative indicated that petitioner was incorrectly awarded total CC benefits of \$12,977.64 because the total accurate income of petitioner would have placed the household over the gross income limit for all of the CC overpayment period.

During the February 20, 2013 hearing and while the record was held open, the county agency representative clearly established with her testimony (and the testimony of the auditor) and its extensive exhibits that the petitioner received total Child Care overpayments of \$12,977.64. During the hearing, petitioner was unable to present any reliable evidence to refute or undermine the county's substantial, reliable testimony or evidence that petitioner's full earned income must be budgeted as income in determining petitioner's CC eligibility and benefits. Furthermore, the petitioner failed to submit any responsive closing argument to DHA while the record was held open. See above Preliminary Recitals. The petitioner's corrected household's total income was above the CC gross income limit for a household

of three for the entire CC overpayment period thereby creating the CC overpayment during the entire period of July, 2011 through October, 2012, pursuant to the Wisconsin Shares Child Care Assistance Manual, § 1.6.3.

The petitioner did not contest that her household had received CC benefits during the period of July, 2011 to October 31, 2012. Furthermore, the petitioner was unable to offer any reliable evidence to refute the accuracy of the county agency's CC overpayment determinations. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the CC overpayment. However, controlling federal regulation requires establishment of a claim against a household for a CC overpayment regardless of whose error caused the overpayment to occur. Accordingly, based upon the above, I conclude that the Department is correctly seeking recovery of child care (CC) overpayments to the petitioner totaling \$12,977.64 during the period of July, 2011 to October 31, 2012, due to failure to timely report earned income or under-reporting earned income resulting in child care ineligibility due to household income above the child care income eligibility limits.

CONCLUSIONS OF LAW

The Department is correctly seeking recovery of child care (CC) overpayments to the petitioner totaling \$12,977.64 during the period of July, 2011 to October 31, 2012, due to failure to timely report earned income or under-reporting earned income resulting in child care ineligibility due to household income 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 25th day of April, 2013

\sGary M. Wolkstein
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 April 25, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud