



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/145872

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration in regard to Child Care (CC) benefits, a hearing was held on February 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether there was an overpayment of CC benefits for the petitioner's children from February 5 through July 31, 2012, in the amount of \$4,162.58.

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 Terrel, CC Subsidy Spec. Sr.
Milwaukee Early Care Administration
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner was employed and a recipient of CC benefits prior to February 5, 2012. CC benefits were paid on her behalf for her two children for the February 6, 2012, through July 31, 2012, period, in an amount exceeding **\$4,162.58**.
3. On November 14, 2012, the county agency issued a CC Overpayment Notification to the petitioner, advising that she had been overpaid \$4,162.58 for the February 5, 2012, through July 31, 2012, period (claim # [REDACTED]), due to client error. Exhibit A. The petitioner timely appealed therefrom.
4. The petitioner's employment with FSQ ended involuntarily on February 5, 2012. At an in-person case review on February 16, 2012, the petitioner continued to tell the agency that she was employed and needed CC. The petitioner was not otherwise employed for February through July, 2012, with the exception of employment at [REDACTED] from June 25 – July 9, 2012.
5. The county agency received daycare payment claims from the relevant provider, [REDACTED] [REDACTED] for the February through July 2012 period. [REDACTED] [REDACTED] is the petitioner's ex-mother-in-law. The Department paid CC benefits to that provider of between \$151 - \$310 weekly for the petitioner's children for the February 5, 2012, through July 31, 2012, period. Exhibit F.
6. The petitioner took her children to the daycare from February, 2012, through July, 2012. The agency has no record of the anyone reporting the cessation of the petitioner's employment until July 17, 2012.

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. *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 CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY 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 provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. THE PETITIONER ASSERTS THAT SHE DID NOT TAKE HER CHILD TO DAYCARE DURING THE OVERPAYMENT PERIOD, AND THAT THE PROVIDER HAS SUBMITTED FRAUDULENT PAYMENT CLAIMS.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation, and she agrees that her employment hours ended by February

5, 2012 (with the exception of the brief interlude at [REDACTED]. If the petitioner was not working or in an “approved activity,” she was not supposed to receive the CC benefit. *Manual*, Ch. 1, §§ 1.4.8 & 1.5.0.

There is also no dispute that the Department made the CC payments to the daycare provider from February through July, 2012. The petitioner testified that she did not take her children to the daycare during the overpayment period. It is her belief that the provider has engaged in fraud against the CC program. If that is the case, the overpayment should be collected from the provider, rather than the petitioner. Neither party produced any sign-in/out attendance sheets for the petitioner’s children during a sample timeframe from the overpayment period. The petitioner did not produce a statement from the provider admitting to incorrect billing for the petitioner’s children for this overpayment period. She testified that she asked the provider for such a statement, and that the provider is not being cooperative.

This ALJ reviewed the Department’s suspended daycare provider list, found at http://dcf.wisconsin.gov/program_integrity/suspended_providers/default.htm. The purpose of this review was to attempt some level of corroboration of the petitioner’s assertion regarding the provider. The provider, [REDACTED], is named on that list. DCF’s identified basis for provider suspension is that the provider overbilled the CC program. The dates of such overbilling are not identified. The provider has not filed a hearing request with this office to challenge her suspension, so I have no ability to see the particulars of the Department’s allegations against her.

Thus, I am left with a suspicion that the provider is dishonest. However, I also know that the petitioner is dishonest, in that she lied to the agency at review on February 16. It is possible that all of the fault here lies with the provider. It is also possible, given that the parties have a familial connection, that the parties were in collusion to defraud the program. Sadly, I have encountered this before: a mother testified that that she did not take her children to daycare and it was all the fault of the cheating provider; I then issued a decision relieving the mother of the overpayment; the mother then appeared at the provider’s overpayment hearing before another judge and admitted that she lied in my hearing, and that the children had actually been at the daycare.

I conclude that overpayment recovery against the petitioner, whose credibility is suspect, is correct. If the petitioner can obtain a written confession from the provider in time for the Rehearing Request (see below), she can submit it to me and I will reconsider. The petitioner may also wish to contact the Department of Children and Families’ Milwaukee CC investigators and ask to review Sign In/Sign Out sheets for the overpayment period.

CONCLUSIONS OF LAW

1. The county agency correctly determined that a CC overpayment occurred from 2/5/12 through 7/31/12.
2. The county agency correctly determined that the overpayment should be recovered from either the petitioner or the provider.

THEREFORE, it is

ORDERED

That the petition 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 Madison,
Wisconsin, this 20th day of February, 2013

\sNancy J. Gagnon
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 20, 2013.

Milwaukee Early Care Administration
Public Assistance Collection Unit
Child Care Fraud