



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/146038

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 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 hearing was held on March 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$3,409.47 from the Petitioner for the period of March 25, 2012 – June 30, 2012.

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 28 and 29, 2012, the agency issued Child Care Overpayment Notices to the Petitioner informing her of the agency's intent to recover an overissuance of child care benefits in

the amount of \$3,409.47 for the period of March 25, 2012 – June 30, 2012 due to not working for a qualified employer during that time and not participating in an approved W-2 activity.

3. On March 20, 2012, the agency issued a Notice of Eligibility Child Care to the Petitioner notifying her that she was eligible for child care benefits for two children beginning March 1, 2012. It further notified her of the need to obtain authorizations.
4. On March 21, 2012, the agency received an employment verification form indicating Petitioner started employment with Glamorosa Salon on March 21, 2012, working 20 hours/week at \$7.25/hour as a massage therapist.
5. On April 2, 2012, the agency issued a Child Care Authorization to the Petitioner for two children for 25 hours/week for the period of March 18, 2012 – September 29, 2012. The notice informed the Petitioner that the authorization was enrollment based. The notice further advised the Petitioner of the responsibility to report changes in her circumstances that may affect eligibility or authorization for child care within 10 days of the change. It noted that changes in the number of hours worked or being unemployed are changes that require reporting. It also notified the Petitioner that she is not eligible for child care benefits when in a job search outside the W-2 program. It also noted that the Petitioner was responsible to report to the child care authorization worker when the child is no longer attending the authorized provider or there is a change in authorized hours needed.
6. On May 29, 2012, the agency issued a Child Care Authorization Information notice to the Petitioner informing her that her two children had enrollment authorizations for 22 and 23 hours/week beginning June 10, 2012.
7. On or about June 8, 2012, the agency received verification that the Petitioner's last day of work at Glamorosa was April 25, 2012.
8. Glamorosa reported no wages of the Petitioner to the state per the state wage record.
9. On December 17, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.155 authorizes the Department of Children and Families (DCF) to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. The subsidy program is known as Wisconsin Shares. The DCF has a Wisconsin Shares Child Care Manual that provides the specific activities, policies and eligibility requirements (including a discussion of income limits and other non-financial requirements) to qualify for the program.

The purpose of the Wisconsin Shares Child Care program is to provide child care assistance for working low-income families; working foster parents, kinship care relatives providing care under a court order and receiving kinship care benefits, and subsidized guardians/interim caretakers in Milwaukee County; and for individuals who are preparing for employment through Wisconsin Works, Food Share Employment and Training Program, tribal Temporary Assistance for Needy Families (TANF), or are in high school and working on their high school diploma.

Wisconsin Shares Child Care Manual ("Manual"), § 1.1.1.

In order to be eligible for child care benefits, every parent in the assistance group must need child care to participate in a W-2 approved activity or activities(s). Manual, § 1.4.8.

Approved activities include work in an unsubsidized job. Manual, § 1.5.3. Unsubsidized employment includes:

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

Manual, § 1.5.3.

In order for self-employment to be considered legitimate for purposes of a W-2 approved activity, it must meet seven or more of the following conditions:

1. The individual holds or has applied for an identification number with the federal Internal Revenue Service.
2. The individual has filed business or self-employment tax returns with the federal Internal Revenue Service based on such services in the previous year or, in the case of a new business, in the year in which such services were first performed.
3. The individual maintains a separate business with his or her own office, equipment, materials, and other facilities.
4. The individual operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means and methods of performing such services.
5. The individual incurs the main expenses related to the services that he or she performs under contract.
6. The individual is responsible for the satisfactory completion of services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services.
7. The individual receives compensation for services performed under a contract on a commission or per-job basis and not on any other basis.
8. The individual may realize a profit or suffer a loss under contracts to perform such services.
9. The individual has recurring business liabilities or obligations.
10. The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

Manual, §1.5.3.7.

In addition to the conditions for non-financial eligibility related to self-employment, authorizations for self-employment are only allowed to the extent that they support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage. Manual, § 3.6.1.1.

In this case, the agency seeks to recover an overissuance of child care benefits to the Petitioner on the grounds that she was not in an approved activity from March 25, 2012 – June 30, 2012 and she did not report a change in her work hours or work status to the child care agency within 10 days of the change.

Though the Petitioner's employer, Glamorosa, reported on the employment verification that the Petitioner worked 20 hours/week at \$7.25/hour, the agency later confirmed that the Petitioner worked as a massage therapist only when her services were required by a client of the salon. The employer clarified that the employment verification was an estimate of the Petitioner's hours and wage based on an expectation that the Petitioner had clients that would seek her services at the salon. In fact, the Petitioner had few clients. The employer clarified with the agency that the Petitioner was only paid when she had a client and since she had few clients, she did not make enough to report her wages to the state. Because the Petitioner had so few clients, her employment with the salon was terminated on April 25, 2012.

The agency asserts that the Petitioner was not working for a qualified employer or engaged in legitimate self-employment during the overpayment period. In support of its assertion, it produced statements from Glamorosa that the Petitioner was not paid regular wages and she worked and was paid so little during the period she was at the salon that it was not required to report her wages to the state. The salon further indicated the Petitioner was only required to be at the salon at times when she had a client for her services.

The agency also asserts that the Petitioner does not meet at least seven of the required conditions to be legitimately self-employed. Specifically, it notes that she does not have a FEIN, has not filed business or self-employment tax returns with the IRS and she does not receive compensation for services performed under a contract on a commission or per-job basis. Further, the agency asserts that there is no evidence that the Petitioner meets any of the other conditions for legitimate self-employment.

The Petitioner presented no evidence to indicate whether she actually worked during the period of March 25 – April 25, 2012 at Glamorosa and, if so, exactly how much she actually worked. The evidence from Glamorosa does not support that the Petitioner required 25 hours/week of child care as authorized beginning March 25, 2012. If she had worked that amount of time, her wages would have been reported to the state. Without evidence of the actual hours worked or wages earned, I cannot conclude that she was actually working. In addition, the Petitioner presented no evidence to suggest that she met the requirements for legitimate self-employment.

With regard to the period of April 25, 2012 – June 30, 2012, the Petitioner did not dispute that she was not engaged in an approved activity. She asserts that she reported the end of her employment to the agency in May and that the agency should have ended her authorizations. She testified that her children did not attend child care during this period. The agency contends that it did not receive notice of the end of her employment until July. There is a written statement from Glamorosa produced by the agency which indicates a fax receipt date of June 4, 2012. Based on the case comments produced by the agency, this statement was received by the Department of Health Services. The first notification to the child care agency of the end of the Petitioner's employment with Glamorosa was July 26, 2012. The Petitioner conceded she did not contact the child care agency specifically to end her child care authorizations. Because the authorizations were enrollment based, the child care provider continued to get paid even though the children no longer attended. The child care authorization notices are clear that the Petitioner must call the child care agency to end the authorizations.

I reviewed the evidence produced by the agency with regard to the child care issuance history and the child care overpayment worksheets. Based on the evidence presented, I conclude that the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$3,409.47 on the grounds that she was not engaged in approved W-2 activities during the period of March 25, 2012 – June 30, 2012 and she failed to report a change in her employment status to the agency within 10 days.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$3,409.47 for the period of March 25, 2012 – June 30, 2012.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 1st day of April, 2013

\sDebra Bursinger
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 1, 2013.

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