



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/146250

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 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. Post-hearing, the record was held open for the Petitioner to submit additional information. No information was received from the Petitioner. The record closed on March 21, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$5,468.17 for the period of February 5, 2012 – July 31, 2012 and \$6940.50 for the period of January 2, 2011 – May 31, 2011 from the 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: Keisha Love

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 January 25, 2011, FG, the father of the Petitioner's youngest child, submitted a FoodShare renewal to the agency. He reported on his application that he is homeless. He reported a mailing address of [REDACTED] St., Milwaukee, WI.
3. On May 23, 2011, the Petitioner submitted an application to the agency for FS benefits. She reported her address as [REDACTED] St., Milwaukee. She reported FG as a member of her household.
4. On August 4, 2011, the agency processed a renewal for FS. He reported being homeless and reported a mailing address of [REDACTED] St., Milwaukee, WI.
5. On January 9, 2012, the Petitioner submitted a change report to the agency to report her new address: [REDACTED] St., Milwaukee, WI.
6. On April 1, 2012, the Petitioner filed a renewal with the agency and reported that FG is no longer in her household.
7. On April 6, 2012, FG submitted a renewal to the agency reporting that he is homeless. He reported his mailing address as [REDACTED] St., Milwaukee, WI.
8. On November 26, 2012 and November 27, 2012, the agency issued Child Care Overpayment Notices and worksheets to the Petitioner notifying her that the agency intends to recover overpayments of child care benefits in the amount of \$5,468.17 for the period of February 5, 2012 – July 31, 2012 and \$6,940.50 for the period of January 2, 2011 – May 31, 2011.
9. FG was not employed during the periods of January 2, 2011 – May 31, 2011 or February 5, 2012 – July 31, 2012 or otherwise engaged in a W-2 approved activity.
10. On December 31, 2012, the Petitioner signed an Affidavit stating that FG moved out of her household in March, 2012. The Affidavit also stated that FG had been in her household from December, 2011 – March, 2012.

DISCUSSION

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).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it is proper given the facts of the case. If the agency meets its burden, the Petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If parents do not meet the eligibility criteria, then they are not eligible for child care (CC) benefits. In this case, the agency asserts that FG resided with the Petitioner during the overpayment periods and that he was not engaged in an approved activity, making him available to provide child care. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

(1m) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and child care services for that child are needed in order for the individual to do any of the following:

1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
- 1m. Obtain a high school diploma ...
2. Work in an unsubsidized job ...
3. Work in a Wisconsin works employment position ...
- 3m. Participate in a job search or work experience component of the food stamp ... program.
4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat. §49.155(1m)(a). See also Wisconsin Shares Child Care Manual (Manual) at §1.4.8.

The Manual provides that: "In two parent families both parents in the AG (assistance group) including step parents and non-marital co-parents must be participating in approved activities. . ." Child Day Care Manual, §1.4.8.2.

The Manual defines child care family or family group as including any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. Manual, §1.2.0.

The Petitioner concedes that she and FG lived together during certain periods. The evidence indicates that the Petitioner has reported to the agency on May 23, 2011 that FG was in her household. The Petitioner also indicated that FG started living with her in August, 2011 or October, 2011 or December, 2011. The lack of consistency in Petitioner's reports makes her testimony with regard to when he started living with her to be lacking in credibility.

However, it is the agency that has the burden of establishing that there was an overpayment due to a 2 parent household. While the Petitioner's evidence indicates that he was living with her on May 23, 2011, the agency's evidence fails to establish that FG and the Petitioner lived together during the period of January 2, 2011 – May 23, 2011. The agency bases its determination for this period on the fact that FG provided the Petitioner's address as his mailing address. FG testified at the hearing that he reported to the agency that he was homeless but the agency insisted that he also provide an alternate or mailing address. His applications during this period indicate that he did report he was homeless and the agency listed his address as [REDACTED]. The Petitioner's address was listed only as his mailing address. The agency testified that FG also provided the Petitioner's address to his employer as evidence by an employment verification form. That employment verification was not produced by the agency at the hearing so I'm unable to consider it as evidence. The only other evidence produced by the agency in support of its argument was a CCAP filing from August, 2011 showing FG's address as [REDACTED] St. This does not fall within the overpayment period so it is not evidence that he was living with the Petitioner from January – May, 2011. There is no other evidence that the Petitioner and FG lived together during this time. Though the Petitioner reported to FG living with her on May 23, 2011, this change would not affect her May benefits since she was required to report within 10 days and the agency has 10 days to make changes make on that report. I conclude the agency has not met its burden of establishing that FG was living with the Petitioner during the overpayment period and has not, therefore, met its burden of establishing that the Petitioner was overissued child care benefits during the period of January 2, 2011 – May 23, 2011.

With regard to the period of February 5, 2012 – July 31, 2012, the Petitioner concedes that FG was in her household during February and March, 2012. Therefore, the period in dispute is April 1, 2012 – July 31,

2012. On April 6, 2012, the Petitioner reported to the agency that he was homeless and no longer a part of the Petitioner's household. The Petitioner had reported in January, 2012 to the agency that she changed addresses to [REDACTED] St., Milwaukee, WI. The Petitioner did not report FG as being out of the house until December 10, 2012. When she reported this, she reported that he had moved out in March, 2012. She signed an affidavit with the child support agency on December 31, 2012 attesting that FG moved out of her household in March, 2012. Again, the agency has the burden of establishing that FG was in the household during the overpayment period. The only evidence produced by the agency is either relevant only for a period after the overpayment period or is not conclusive as to FG's residence. The investigation report produced by the agency discusses surveillance that presumably took place in October, 2012 (presumably because the portions of the report describing the surveillance are undated). The other evidence produced as part of the investigation report includes police calls to [REDACTED] St., Milwaukee from 2004 – October, 2012. It is unclear how this is relevant for a number of reasons, including that the Petitioner only lived at that address since January, 2012 and the information contains no evidence to suggest who was living on the premises or who placed the calls. I note that the vast majority of the calls from January – October, 2012 were for "911 abuse" which adds nothing to the investigation of whether FG lived with the Petitioner. I further note that this document refers to calls to [REDACTED] St. and not specifically to [REDACTED] St. It is unclear what the relevance is of police calls made for the entire apartment building for purposes of demonstrating FG's residence.

The investigation report contains a DOT record showing that FG registered a vehicle using the Petitioner's address on March 26, 2012. The Petitioner concedes that FG was living with her in March, 2012. Another DOT record shows the same vehicle registered to FG at Petitioner's address in September, 2012. The investigation also includes information to demonstrate that FG receives mail in October, 2012 at the Petitioner's address. FG concedes that he uses Petitioner's address as his mailing address. Also, information as to FG's residence in September and October is not relevant to his residence during the period of February – July, 2012. Without any additional evidence, this is insufficient to establish his residency during that period.

The agency has not met its burden of establishing that the Petitioner and FG lived together from April 1, 2012 – July 31, 2012.

In summary, the agency has not met its burden of establishing that the Petitioner and FG lived together during the period of January 2, 2011 – May 31, 2011 or from April 1, 2012 – July 31, 2012. Petitioner and FG conceded at the hearing that they lived together in February and March, 2012 and FG was not in an approved activity during that time. I reviewed the information produced by the agency with regard to the issuance of child care benefits during that period and conclude that the agency correctly determined that the Petitioner was overissued child care benefits in the amount of \$1,512.08 for February and March, 2012. With regard to the remaining portions of the overpayment period, the agency has not met its burden.

CONCLUSIONS OF LAW

The Petitioner was overissued child care benefits in the amount of \$1,512.08 for February and March, 2012. There is insufficient evidence to conclude that the Petitioner was overissued child care benefits for the period of January 2, 2011 – May 31, 2011 and for the period of April 1, 2012 – July 31, 2012.

THEREFORE, it is

ORDERED

That this matter be remanded to the agency to rescind its overpayment notices dated November 26 and 27, 2012 in the amount of \$6940.50 for the period of January 2, 2011 – May 31, 2011 and to cease all collection actions related to that notice. Further, with regard to the overpayment notices dated November 26 and 27, 2012 in the amount of \$5,468.17 for the period of February 5, 2012 – July 31, 2012, the agency is ordered to rescind that part of the notice related to an overissuance for the period of April 1,

2012 – July 31, 2012 and to cease all collection actions for that period. The agency may recover \$1,512.08 from the Petitioner for an overissuance of child care benefits for the period of February 5, 2012 – March 31, 2012. These actions shall be taken within 10 days of the date of this decision.

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 30th day of April, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 30, 2013.

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