



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/146252

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 28, 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 scheduled for March 13, 2013. Following approval of petitioner's request to reschedule that date, a hearing was held on April 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$579.60 for the period of July 29, 2012, through August 31, 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:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner and [REDACTED] [REDACTED] received child care assistance for their child during the period of July 29, 2012, through August 31, 2012.
3. Following a review of the case, the agency discovered that it had erroneously granted child care assistance during the period of July 29, 2012, through August 31, 2012, due to agency error, i.e. the respondent had incorrectly determined that [REDACTED] [REDACTED] was participating in an approved activity.
4. By a notice mailed on November 30, 2012, the agency informed petitioner that she and Mr. [REDACTED] were overpaid \$579.60 in child care during the period of July 29, 2012, through August 31, 2012, due to agency error for failing to correctly budget earned income.

### DISCUSSION

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.

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. 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. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency, but if so it only goes back one year from the notification date. Wisconsin Shares Child Care Assistance Manual, §2.5.1.2.

Whether the overpayment determination was correct was the only issue raised on appeal. The respondent's calculations were not the subject of objection. The respondent conceded that the petitioner had provided all necessary and requested documentation in a timely manner. The error, according to the respondent, arose from its determination that [REDACTED] [REDACTED] was participating in an approved activity, as that term is defined by the W-2 program.

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. Wis. Stats., §49.155(1m). In this case, the agency asserts that Mr. [REDACTED] was not engaged in an approved activity during the overpayment period. If one parent is in a qualifying activity and the other is not, neither is eligible. Wisconsin Shares Child Care Assistance Manual § 1.4.8.

With Mr. [REDACTED] not participating in an approved activity, they failed to meet the requirement described above. Thus, the household was ineligible for Child Care Benefits, and I must conclude that the agency correctly determined an overpayment, even though petitioner was totally faultless in the process. While this situation certainly raises issues of fairness, it is the long-standing policy of the Division of Hearings &

Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, petitioner is liable for overpayment resulting from the error of the respondent; no exception applies, aside from limitations on the recovery period not applicable here.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid child care assistance due to agency error.

**THEREFORE, it is**

**ORDERED**

That 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).

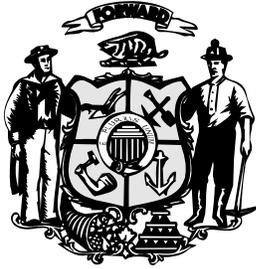
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East 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 29th day of May, 2013

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\sPeter McCombs  
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 29, 2013.

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