



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/146254

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA ["MECA"] in regard to Child Care ["CC"], a Hearing was held via telephone on March 12, 2013.

The issue for determination is whether the following Claim may be established against petitioner for an overpayment of Wisconsin Works ["W-2"] CC: Claim # [REDACTED] for the time period May 6, 2012 to December 31, 2012 in the total amount of \$9,623.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tamika Terrell, Child Care Subsidy Specialist, Senior
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

OTHER PERSON PRESENT:

Jennifer Tremaine, Investigator, Interstate Reporting

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is married to adult male JJC and they have a minor child in common.
3. MECA established the following Claim against petitioner for an overpayment of W-2 CC: Claim # [REDACTED] for the time period May 6, 2012 to December 31, 2012 in the total amount of \$9,623.00.
4. During the time period of the overpayment detailed in *Finding of Fact #3*, above, petitioner, JJC, and their child all lived together.
5. During the time period of the overpayment detailed in *Finding of Fact #3*, above, JJC had income; JJC's income put petitioner over the W-2 CC income limit.

DISCUSSION

The County or agency must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2011-12); See also, Wis. Admin. Code §§ DCF 101.23 (February 2012) & 201.04(5)(a) (April 2012); *Wisconsin Shares Child Care Assistance Manual* (5/3/12) ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (April 2012); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (February 2012); CC Manual 2.1.5.1. & 2.1.5.2.

Petitioner does not deny that JJC's income would put her over the W-2 CC limit. Petitioner requested a Hearing because she claims that JJC did not live with her during the time period in question. MECA claims that he did. The Decision in this matter must be based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The preponderance of the credible evidence in the record of this matter is that JJC lived with petitioner during the time period in question.

Petitioner produced a written note signed by JJC stating that since April 2012 he has lived at an address different than petitioner's address. Petitioner testified that she recently (in March 2013) called the police to have JJC removed from her premises. None of this is convincing in light of all the other evidence in the record of this matter.

MECA presented convincing evidence that JJC was living in the same home with petitioner during the time period in question including: motor vehicle records; U.S. Post Office delivery information; a residential lease; and , video surveillance. This is in addition to the fact that petitioner and JJC are married and have a child in common.

Based on all of the above evidence it must be concluded that during the time period of the overpayments petitioner, JJC, and their child all lived together.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for overpayments of W-2 CC: Claim # [REDACTED] for the time period May 6, 2012 to December 31, 2012 in the total amount of \$9,623.00.

NOW, 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 2nd day of April, 2013

\sSean P. Maloney
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 2, 2013.

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