



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/146831

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a hearing was held on June 5, 2013, at Milwaukee, Wisconsin. A hearing set for May 8, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner was overpaid CC benefits totaling \$10,706.91 for the January 1 through June 30, 2012, period.

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, CC Subsidy Spec. Sr.
Milwaukee Early Care Administration - MECA
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 had an open CC case and was working throughout the January through June 2012 period. She took her two children (MM and TM) to day care throughout the period, and the CC program paid CC subsidies to the daycare provider that totaled \$10,706.91 during the period.
3. The father of the two children is [REDACTED]. Mr. [REDACTED] was employed during a portion of 2012, but was not employed from January through June 2012. If a second, unemployed parent is present in a CC household, no CC benefits are needed because the unemployed parent is available to care for the children. The petitioner *now* admits that [REDACTED] moved in with her for the month of June 2012. The amount CC subsidy paid out for June 2012 was \$1,643.24.
4. From 2010 through June 2012, the petitioner and the children resided at [REDACTED].
5. From January through June 2012, [REDACTED] resided with the petitioner at [REDACTED]. [REDACTED] provided the child support agency with the [REDACTED] address as his own for an indeterminate period preceding November 6, 2012; he did not identify it as a mailing only address. On November 6, 2012, the petitioner signed an Affidavit of Nonresidence for the Milwaukee County Circuit Court-Family Division. In that Affidavit, she attested that [REDACTED] "has not lived with me since June 2012." See, Exhibit D3.
6. The petitioner did not report [REDACTED] as a member of her household to the CC agency at any time during the January through June 2012 period.

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 (the responsible agency at the time) changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.1.5.3. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO 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*, §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy is available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. AN OVERPAYMENT OCCURRED, DUE TO [REDACTED]'S PRESENCE IN THE HOUSEHOLD.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation. She also acknowledges that she has children with [REDACTED], that she took them to daycare during the subject period, and that [REDACTED] was not employed or participating in W2 activities during the overpayment period.

When two adults and their minor child-in-common reside together, regulations require that they be treated as one CC household. *Manual*, §1.2.0, "Family" definition. The agency contends that the petitioner, [REDACTED], and their children resided together throughout the January – June, 2012 overpayment period; the petitioner contends that he did not live with them during these months (except June).

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the eligibility criteria, then CC cannot be granted. The agency asserts that the unemployed father's presence in the home made CC benefits unnecessary. Free child care could have been provided by the unemployed parent. 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.

[emphasis added]

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8.

The heart of the dispute here is whether the ██████ resided with the petitioner during the overpayment period. The agency proffered documentation of a *prima facie* case that he was residing with her. The petitioner offered only her self-serving testimony, which was not credible. Given that she now admits that he resided with her in June 2012, why did she not report his presence at that time? When she signed the November 6, 2012 Affidavit, why did she state that he had not lived with her since June 2012, if he actually had not been living with her since December 2012, or even an earlier date?

Based on the foregoing, I found that the petitioner lived with ██████ during the January 1, 2012 – June 30, 2012, overpayment period, and that she has been overpaid.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$10,706.91 in CC from January 1, 2012, through June 30, 2012, due to client error.

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 27th day of June, 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 June 27, 2013.

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