



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/147345

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2013, 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 April 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining a child care overpayment in the amount of \$9,620.87 for the period from April 15, 2012 to September 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: Daryl Caper

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

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2012, petitioner was enrolled in the Child Care Program.

3. An April 13, 2012 authorization for CC was based on petitioner's own self-employment as a child care provider.
4. Petitioner's license as a child care provider was suspended in 2011.
5. Petitioner began working for [REDACTED] in May 2012. Petitioner did not notify her agency.
6. On June 6, 2012, petitioner completed an online Access renewal for CC, FS and MA. Petitioner's application indicated that she was self-employed as a regulated child care provider.
7. On August 17, petitioner contacted the agency. During that call, the agency worker inquired about petitioner self-employment, her place of operation, etc. The call was abruptly terminated. The agency investigated and determined that petitioner was no longer licensed and payments to her business had been suspended.
8. Petitioner reported to the agency on August 23, 2012 that she was employed at [REDACTED].
9. The agency contacted [REDACTED] by telephone but the employer refused to provide information at that time.
10. The agency did not locate a Federal Employer Identification Number (FEIN) on its databases for [REDACTED]. The agency was unable to find any wage information for wages paid by [REDACTED] on its Databases. The agency, therefore, deemed [REDACTED] to be an unqualified employer.
11. On August 27, 2012, petitioner called the agency to inform them that she was no longer self-employed and that she had closed her business.
12. The Department issued an overpayment notice on April 18, 2013 indicating a CC overpayment in the amount of \$9,620.87.
13. Petitioner filed a timely appeal.

### DISCUSSION

The applicable overpayment rule requires recovery of the overpayment, regardless of whether it was the fault of the client or the agency. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual (Manual)*, §2.3.1. 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>. The Department determined an overpayment on two bases: (1) that petitioner failed to report changes to the agency; and, (2) that petitioner's employer was not a qualified employer.

#### I. FAILURE TO REPORT

##### **1.15.0 On Going Eligibility**

###### **1.15.1 Reporting Requirements**

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

### 1.15.2 Examples of Required Information to be Reported

Examples of some of the information that parents are required to report include:

- The Department requires a CC Program participant to report significant changes in circumstances:
- A change in the scheduled approved activity hours
- A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.
- A change in approved activity status (starting or ending an activity)
- A change in their Assistance Group composition.

Petitioner called the agency on April 13 and requested CC based on self-employment. This was approved. But, on April 15, petitioner now claims that she began training at [REDACTED]. She testified that she began work there on May 1, 2012. But, the various records provided by the agency do not reflect any information about [REDACTED] until an August 23 phone call from petitioner. Petitioner was unable to provide any evidence that she had provided information about [REDACTED] being her employer prior to August.

I found petitioner not credible. She repeatedly asserted that she had told the agency of her employment and that was why she was authorized. But none of the case comments corroborate this. In fact, the agency's case comments repeatedly reflect that petitioner continued to say she was self-employed. Indeed, in her June renewal she stated that her income was from self-employment. Petitioner did not mention [REDACTED] on that Access renewal in June. Why?

Because petitioner was not approved for CC payments other than based on her self-employment, this was an overpayment until she notified the agency on August, 23, 2012.

## II. QUALIFIED EMPLOYER.

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 lack of employment/approved activity made CC benefits unnecessary. 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)(g)[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, Wis. Admin. Code §DCF 201.04(2g)(d). Neither section 49.141(1), section 49.155, nor Wisconsin Administrative Code Chapter 201 defines either “unsubsidized job” or “employer.”

Another code chapter with some limited provisions regarding CC contains the following definition of “unsubsidized employment:”

**DCF 101.03 Definitions.** Unless otherwise provided, in this chapter:

...

**(35)** "Unsubsidized employment" means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities.

Wis. Admin. Code §DCF 101.03(35). Notably absent from this definition is any requirement that the employer have a Federal Employer Identification Number (FEIN).

The Department's policy document states that unsubsidized employment is an approved activity for CC purposes. It goes on to declare that only two types of unsubsidized employment can create nonfinancial eligibility: (1) self-employment or (2) “working for a qualified employer who has a Federal Employer Identification Number (FEIN).” *Manual*, §1.5.3 (10/14/09). ██████ does appear to have had a FEIN. The Department's dispute is based on the fact that the wages were not reported and that the FEIN was not in its system. The agency cites § 1.5.3.1 of the Manual which states:

#### **1.5.3.1 Qualified Employers**

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete.

In this case, it is undisputed that the “employer” did not have an FEIN on record. The agency also convincingly asserted that the “employer” did not have any history of paying wages in Wisconsin or completing any of the other formalities that an employer would normally show.

If ██████ had employed petitioner since April 14 for training and from May 1 for true employment then why would they not reflect any wages paid when the state looked at the record of wages paid in August? My impression based on all the testimony is that petitioner was likely not legitimately employed and was collecting CC benefits. She reported self-employment for months after her business was shut down by the state. The June Access renewal shows this – if she were employed at ██████ why did she not report it on the renewal? When the agency realized this and inquired, petitioner turned around and reported employment with ██████. Petitioner now states that she reported ██████ much earlier, though there is no proof of this. I question the legitimacy of all the documents provided by ██████. The fact is that ██████, while it may have an FEIN (which is still questionable based on this record) it certainly did not have an FEIN in the CARES Worker Web record. It did not upload any data to the state wage record. I find none of the information provided persuasive enough to convince me that the ██████ employment was not simply made up with documentation supplied by the “company” to cover the period of time of the CC payments after the state realized the claim of self-employment was false.

**CONCLUSIONS OF LAW**

The Department did not err in determining the overpayment of CC.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 24th day of May, 2013

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 24, 2013.

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