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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/148146

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 18, 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 May 01, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether respondent correctly determined that petitioner received an overissuance of Child Care (CC) benefits in the amount of \$3,221.93 from August, 2012 through January, 2013.

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: Tamika Terrell

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. The agency sent Petitioner a notice dated March 13, 2013 that informed Petitioner that she had been overissued child care benefits in the amount of \$3,221.93 for the time period of August, 2012, through January, 2013.
3. The childcare center to which Petitioner was taking her child is owned by Petitioner's employer, and Petitioner works at that child care center.
4. The agency bases this overpayment on the contention that children of parents who are employed by certified child care providers are not eligible for an authorization at the child care provider where their parent is employed.

### DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code. 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 **or whose error caused the overpayment.** *Wis. Admin. Code, § DCF 101.23(1) (g). Adm. Code. (emphasis added)*. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual, §2.3.1*. Respondent has asserted that the reason for the overpayment was agency error. Exhibit 3B.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the "preponderance of the evidence" in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that "it is more likely than not" that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

The Wisconsin Shares Child Care Assistance Manual addresses situations where a parent employed by his or her child's childcare provider seeks child care benefits :

#### **3.6.27 Authorizing When the Provider is the Child's Parent or Other Legally Responsible Adult, or Provider Resides with the Child**

State statute prohibits authorizations to a child care provider for the care of their own child or a child with whom they reside.

- For purposes of this requirement, a child is considered to reside in any home where they have placement.
- A child can have more than once residence.
- Any placement arrangement that puts a child with a parent or other person for any period of time makes that child a resident of the parent or other person’s home.

There is a very narrow statutory exemption which allows a county to approve child care payments to a parent, legally responsible adult, or other person who resides with the child if the care is necessary because of a special health condition of the child.

- In all other cases, the provider cannot be paid if they are the parent, another legally responsible adult, or if they live in the same residence as the child. (See Ch 1 Definition of parent).

Authorizations are not allowed for a parent to receive Wisconsin Shares child care assistance funding for caring for their children regardless of the type of provider (Certified, Licensed Family, Licensed Group), or the type of ownership (the parent owns all or part of the facility as an individual, sole proprietor, partnership, or stockholder in a corporation).

A family child care provider may be eligible for Wisconsin Shares child care assistance for his/her own children when they attend another child care setting outside of their home if they meet financial and non-financial eligibility criteria.

- This provision is limited to the hours that child care (for other children) is being done in his/her own home.
- The parent who is a Child Care provider is considered to be self-employed and the provisions of Section 3.6.1.1 apply.
- If child care eligibility exists, the parent, who is also a child care provider, could receive an authorization for his/her children to attend a child care provider who is not their parent or other legally responsible adult or person with whom they reside.

<b>Examples of situations where authorizations cannot be made for a child to receive child care from their parent or other legally responsible adult or person with whom they reside:</b>
Amy is a certified or licensed family day care provider and is eligible to receive child care subsidy for her child Mary. Amy cannot be authorized to provide child care for Mary.
Linda owns a licensed group day care and the day care is considered a non-corporation for tax purposes. (The day care is either an individual, sole proprietor or partnership). Linda is eligible to receive child care for her children while she is at work, as long as they are cared for with another provider.
Mary and her husband have incorporated as owners of Mary’s Little Lambs Child Care Center. They are eligible for child care for their foster son while both parents are in approved activities, as long as the care is with another provider.
Miles is a nurse who works at a local clinic. He is eligible for child care for his medically fragile son, Michael. His mother also lives with them and is trained to work with the child’s health needs. The county agrees that the best care situation for Michael is for his grandmother to care for him at home. She becomes a Provisionally Certified In-Home provider and can receive Wisconsin Shares payments for Michael’s care under the statutory exemption.
Leo is Maria’s father. Leo lives with his mother, Juana who is a certified child care provider. Leo has placement of Maria every other weekend. Maria’s mother, Nancy, has placement the rest of the time, and is eligible for Wisconsin Shares. Maria is considered to live with

her grandmother, Juana, and cannot be authorized to Juana for child care.

Authorizations are allowable for a child of a Wisconsin Shares child care assistance eligible child care provider to have their child care authorized to child care provider other than their parent or someone legally responsible for them or someone with whom they reside.

Authorizations are allowable for a child to receive child care at a child care home or center where their parent or other legally responsible adult is employed as long as they are not the owners of the child care home or facility and their employment has been verified by the local agency that their child care provider/employer meets the criteria of being a qualified employer according to the provision of Qualified Employers in Ch 1, Section 1.5.3.1 (See Qualified Employers).

<b>Examples of situations where child care can be authorized for a child whose parent is employed at the child care provider where the child attends include:</b>
Margaret is a certified provider and hires Rachel to care for the day care children. Rachel brings her son, Mike to work with her. Rachel is eligible for child care funding. Rachel can receive an authorization to Margaret’s child care.
Little Sweeties is a licensed group center. Veronica works at Little Sweeties and is eligible for child care funding. Veronica can receive an authorization to Little Sweeties regardless if she cares for her child at the center.

*Wisconsin Shares Child Care Assistance Manual, §3.6.27*

Also relevant here is the definition of child care provider:

...  
 Child Care Provider or “Provider.” A provider licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established or contracted for under s. 120.13 (14), Stats.

...  
*Wisconsin Shares Child Care Assistance Manual, §1.2.0 (Definitions)*

In reviewing the *Wisconsin Shares Child Care Assistance Manual (Manual)* provision at §3.6.27, I cannot find language that would support the agency position here. Petitioner is not the licensee so was not a provider as defined by the *Manual*. The *Manual* explicitly states that a parent can have their child cared for at the provider for which they're working. Confusingly, however, that same *Manual* contradicts itself providing that children of parents who are employed by certified child care providers are not eligible for an authorization at the child care provider where their parent is employed. See, *Manual* § 1.5.3.1. This language directly contradicts *Manual* § 3.6.27, and the “examples of situations where child care can be authorized for a child whose parent is employed at the child care provider where the child attends...” specifically the example referencing “Margaret” and “Rachel,” above. Relying on one *Manual* section, while ignoring another that happens to contradict it, cannot serve to establish a proper basis for an overpayment. I am, therefore, concluding that there is no basis for this overissuance and am reversing it.

**CONCLUSIONS OF LAW**

That Petitioner was not overpaid child care benefits for the period from for the time period of August, 2012, through January, 2013.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to reverse and rescind overpayment claim no. 0900372480, in the amount of \$3,221.93, covering the time period of August, 2012, through January, 2013. This must be done 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 Madison,  
Wisconsin, this 5th day of July, 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 July 5, 2013.

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