



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

CCO/148146

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 in regard to Child Care, a hearing was held on May 1, 2013, at Milwaukee, Wisconsin. On July 5, 2013, a Final Decision was issued by the Administrative Law Judge (ALJ). A rehearing was thereafter requested by the Department of Children and Families (DCF) on July 9, 2013. The request for a rehearing is hereby approved.

Pursuant to sec. 227.49, Wis. Stats., a rehearing may be granted only on the basis of a material error of law or fact or upon the discovery of new evidence sufficiently strong to reverse or modify the order and which could not have been discovered previously by due diligence. The petition must specify in detail the grounds for the relief sought and supporting authorities. The request established the grounds necessary for granting a rehearing in this matter, i.e. a material error of law.

As noted in the respondent's July 9, 2013 correspondence, the respondent at hearing relied upon provisions contained in the Wisconsin Shares Child Care Assistance Manual to support its contention that the petitioner was over-issued Child Care benefits. This ALJ cited contradictory language in the Manual in ordering the rescission of the alleged overpayment.

Subsequently, the respondent submitted a rehearing request. Respondent's attorney cited to a state statute not identified at hearing, which supersedes the Wisconsin Shares Child Care Assistance Manual. Specifically, the applicable statute states:

No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider who employs either the parent of the child or a person who resides with the child, unless the child care provider is licensed under s. 48.65 and at all times at least 60 percent of the children for whom the child care provider is providing care are qualifying children.

Wis. Stat. § 49.155(3m)(e)2. The respondent correctly notes that state statutes supersede policy provisions, such as those contained in the Wisconsin Shares Child Care Assistance Manual.

Consequently, the original Final Decision dated July 5, 2013, is hereby AMENDED as follows:

1. The final sentence of the **DISCUSSION** section is hereby deleted.
2. The following paragraph shall be added to the end of the **DISCUSSION**:

Notwithstanding the foregoing, Wisconsin statutes do not include the contradiction that exists in the Wisconsin Shares Child Care Assistance Manual. Instead, the statutes plainly specify that the petitioner is not eligible for Child Care benefits while employed by her child's certified, but not licensed, provider.

No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider who employs either the parent of the child or a person who resides with the child, unless the child care provider is licensed under s. 48.65 and at all times at least 60 percent of the children for whom the child care provider is providing care are qualifying children.

Wis. Stat. § 49.155(3m)(e)2. Exhibits provided by the respondent at hearing established that petitioner's employer, while a certified child care provider, is not licensed. See, Exhibit 3 (E1p.1). Therefore, respondent has demonstrated that petitioner was ineligible for Child Care benefits, and was over-issued Child Care benefits from August, 2012, through January, 2013, due to agency error in mistakenly authorizing said benefits.

3. The Conclusions of Law are hereby replaced as follows:

CONCLUSIONS OF LAW

Due to agency error, the petitioner was overpaid child care benefits for the time period of August, 2012, through January, 2013, in the amount of \$3,221.93.

4. The Order is hereby replaced as follows:

THEREFORE, it is ORDERED

That the petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is an AMENDED 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 12th day of August, 2013.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVIS

Wayne J. Wiedenhoft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

The preceding decision was sent to the following parties:

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