



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/148167

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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 Milwaukee Early Care Administration to recover child care payments, a hearing was held on May 8, 2013, by telephone.

The issue for determination is whether petitioner took her children to daycare when their father was not working.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Keisha Love

Milwaukee Early Care Administration - MECA  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with V.H. and their three children. They received child care assistance in 2012 because both parents were working. V.H. lost his job on August 6, 2012. Petitioner reported the lost job no later than August 20. V.H. started a new job on September 24, 2012.
3. Petitioner's child care provider submitted claims for the children for the entire period of August 12 through September 22, 2012 because petitioner continued to take the children there.

4. By a notice dated February 22, 2013, the agency informed petitioner that she was overpaid \$2,199.54 in child care assistance from August 12 through September 30, 2012, claim no. 1900366141 (although the notice stated the period was through September 30 the claim actually went through only September 22). The claim was for all child care paid during the period.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

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 Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the 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. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

Both petitioner and V.H. attended the hearing, and both testified that they did not take the children to day care after V.H. lost his job with exception of two days when V.H. had a job interview and then an orientation. The agency had substantial evidence to the contrary.

The agency presented the billing record and a copy of the electronic attendance record submitted by the child care center. The electronic record does have an air of credibility. It shows different sign-out times and it shows days that the children were not present at all (the children were shown as absent from Thursday, August 30 through Wednesday, September 5). Since the authorizations were attendance based, one would think that a dishonest provider would maximize the hours shown and not report entire days of no attendance.

Furthermore, case notes show that on September 10, 2012, petitioner contacted the agency in response to a notice that child care would end September 30 to ask why child care was ending. It seems like a strange question from someone who was not taking the children to day care because their father was unemployed.

Finally, and crucially, a case note dated October 8, 2012 states that petitioner came in for a new child care authorization. The note states that petitioner works until 2:00 p.m. and V.H. starts work at 2:00 p.m., so the requested authorization was granted for two hours per day for the travel time for the couple. The note goes on to say that petitioner was utilizing the child care provider during the period August 7 to September 24. A second note from that day states that petitioner was transferred to that agency worker to ask why she was only being approved for two hours per day. Again, if petitioner knew the rule about two parent households, why would she question the two-hour authorization? More importantly, why did petitioner admit to the first

worker that she utilized the day care in August and September (or at least why did she not protest if the worker brought up the question)?

V.H. testified that the child care was suspended. I checked the Department of Children and Families website that lists all child care providers suspended for billing and other improprieties. The child care center attended by petitioner's children was not on the list of currently suspended centers or of centers that have been reinstated.

The preponderance of the evidence is that petitioner took her children to child care during the period when their father was not working. I conclude that the claim was determined correctly.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid child care because she utilized services during a period when her co-parent was unemployed.

**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 15th day of May, 2013

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\sBrian C. Schneider  
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 May 15, 2013.

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