



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/148197

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Winnebago County Dept. of Human Services to recover child care assistance, a hearing was held on April 18, 2013, by telephone.

The issue for determination is whether petitioner's appeal of a child care overpayment was timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Leslie Vosters
Winnebago County Dept. of Human Services
P.O. Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner received child care services in 2012. By a notice dated November 23, 2012, the agency informed her that she was overpaid \$4,303 in child care between March 25 and August 31, 2012 because she failed to report an adult household member. The notice specifically told her that she could appeal within 45 days to the Division of Hearings and Appeals.

3. Petitioner filed this appeal on March 15, 2013.

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 basis for the overpayment is a conclusion that the father of petitioner's child was in her home. Because he was not working, the household was ineligible for child care.

An appeal of a negative decision concerning child care must be filed within 45 days of the negative decision. Wis. Admin. Code, §HA 3.05(3). Petitioner acknowledges receiving the notice of the overpayment, and thus she had until January 8, 2013 to appeal. Because she did not do so within the time limit, I must conclude that the overpayment was correct.

The only way I could find the appeal to be timely is if petitioner stated an intent to appeal to an agency worker and the appeal did not get put into writing timely. I reviewed the agency's case notes. The only mention of the overpayment by petitioner prior to January 8 was January 2, 2012. The note says that petitioner called with questions about the overpayment and was referred to the ongoing worker. No mention is made about an appeal. It was not until January 17 that a case note states that petitioner "disagrees with the overpayment." Even if I were to take that statement as an affirmative appeal, it would be untimely.

CONCLUSIONS OF LAW

Petitioner's appeal of a child care overpayment was untimely.

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 24th day of April, 2013

\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 April 24, 2013.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud