



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/148589

PRELIMINARY RECITALS

Pursuant to a petition filed April 9, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a hearing was held on May 1, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid CC benefits of \$3,115.06 for the September 11, 2011 through February 28, 2013 (non-continuous), period.

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner has a minor child who requires childcare while she is working. The petitioner had CC benefits paid on her behalf for September, October and December 2011, that totaled \$991.20. For the June 2012, and September 2012 – February 2013 period, CC totaling \$2,123.86 was paid out on the petitioner's behalf.
3. On March 28, 2013, the Department issued a *CC Client Overpayment Notice* to the petitioner, advising that she had been overpaid **\$991.20** for the September 1, 2011, through December 31, 2011, period (claim # [REDACTED]), due to client error. Exhibit 1A. On the same date, the Department issued another *CC Client Overpayment Notice* to the petitioner, advising that she had been overpaid **\$2,123.86** for the June 1, 2012 to February 28, 2013, period (claim # [REDACTED]), due to client error. The petitioner timely appealed therefrom.
4. The petitioner was employed during the questioned 2011 period. The county agency issued the following pertinent CC benefits for 2011: \$291.80 for September, \$364.75 for October, and \$334.65 for December. However, because the household's gross income exceeded the limit for any amount of CC in those months, all of those amounts were an overpayment.
5. Throughout the September through December 2011 period, the petitioner worked 40 regular hours per week, at \$14.95 hourly (\$598 weekly), at [REDACTED]. She also earned overtime of \$76.95 in September, \$119.28 in October, \$93.21 in December, and received a \$1,640.70 bonus in December. The petitioner also worked part-time at [REDACTED], grossing \$112.50 in September, \$67.50 in October, and \$94.50 in December. The gross income limit for CC was \$2,452 in these months.
6. The petitioner was employed at [REDACTED] during the June 2012 through February 2013 period. She continued to work 40 hours weekly, grossing \$598 weekly in regular pay. She also earned overtime of \$69.97 in June, \$25.00 incentive in September, \$10.99 in October, \$26.47 in November, and \$16.15 in December, 2012, plus \$18.61 in January and \$20.86 in February, 2013. A \$1,791.53 bonus was issued in December 2012. The petitioner also began working at [REDACTED] in June 2012. From [REDACTED] she earned an average (per DWD wage cross-match, no 2012 paystubs made available by either party) of \$139 in September 2012, \$804 monthly in October – December 2012, and \$535 monthly in January and February 2013 (per paystubs). The gross income limit for CC was \$2,522.00 in these months.
7. The income figures used by the agency to generate the CC payments were at odds with the household's actual income because the household failed to timely report the petitioner's job commencement (August 2011) at [REDACTED]. The household also failed to timely report the receipt of overtime and the December bonus. The authorization notices issued to the petitioner (for example, on June 6, July 11, August 29, September 6, October 31, December 12, and December 26, 2011) all contain pre-printed instructions on the back that direct the recipient to report to the agency within 10 days any change in income that might change eligibility. Thus, the reporting failure was client error. Unfortunately the Department left this case open without an annual review in 2012, which might have contributed to whatever confusion the petitioner was experiencing.

DISCUSSION

I. JURISDICTION.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat §

49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.1.5.3. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation, and she does not contest that she held the jobs identified in the Findings. The petitioner did not produce any evidence to suggest that the income information received by the Department from the employers was incorrect. She argued that someone from the agency should have told her that she was over the income limit, so that she would not have stayed on the program and run up this large overpayment.

The county agency submitted documentation of all of the income amounts that were used in its computations. The petitioner was required to timely report (within 10 days) any job commencement and increased income, and she did not do so. *Manual*, 1.15.1. Therefore, the overpayment here was caused by client error.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner was overpaid CC from 9/1/2011 through 12/21/2011, in June 2012, and from September 2012 through February 2013.

THEREFORE, it is

ORDERED

That the petition 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 26th day of July, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
CCoverNonreport



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 26, 2013.

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