



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/148712

PRELIMINARY RECITALS

Pursuant to a petition filed April 12, 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 June 05, 2013, at Milwaukee, Wisconsin. The hearing was originally scheduled for May 15, 2013, but was rescheduled at petitioner's request. At petitioner's request, the record was held open for a period of 10 days to allow for the introduction of additional documents. Said documentation was timely received.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner for the period of April 1, 2011 – August 31, 2012, in the original amount of \$19,499.74.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Darryl Capers

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
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On March 28, 2013, the agency issued Child Care Overpayment Notices with worksheets to the Petitioner notifying her that the agency was seeking to recover the following overpayments: Claim no. [REDACTED] in the amount of \$10,138.91 for the period of April 1, 2011 – December 31, 2011, and Claim no. [REDACTED] in the amount of \$9,360.83 for the period of January 1, 2012 – August 31, 2012. Exhibit A.
3. Petitioner and AT have a child in common. At all times material hereto, Petitioner resided at [REDACTED]. AT used Petitioner's address at various times during the period of April 1, 2011 - August 31, 2012, when AT did not have his own permanent residence.
4. In ACCESS applications, AT claimed rent and utilities at Petitioner's address. Exhibit H.
5. On April 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it is proper given the facts of the case. If the agency meets its burden, the Petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

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). The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If parents do not meet the eligibility criteria, then they are not eligible for child care (CC) benefits. In this case, the agency asserts that AT resided with the Petitioner during the overpayment periods and that he was not engaged in an approved activity, making him available to provide child care. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

(1m) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and child care services for that child are needed in order for the individual to do any of the following:
 1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
 - 1m. Obtain a high school diploma ...
 2. Work in an unsubsidized job ...
 3. Work in a Wisconsin works employment position ...
 - 3m. Participate in a job search or work experience component of the food stamp ... program.
 4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
 5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat. §49.155(1m)(a). See also Wisconsin Shares Child Care Manual (Manual) at §1.4.8.

The Manual provides that: “In two parent families both parents in the AG (assistance group) including step parents and non-marital co-parents must be participating in approved activities. . .” Child Day Care Manual, §1.4.8.2.

The Manual defines child care family or family group as including any non-marital co-parent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or non-marital co-parent is a custodial parent. Manual, §1.2.0.

The Respondent has presented a well-organized and well-documented case. The Petitioner likewise has presented convincing and credible arguments, which I find to have successfully refuted the Respondent’s allegations. Because I conclude that the Respondent has not established that AT lived with Petitioner during the overpayment periods, AT’s participation in an approved activity during this time is moot.

It is the agency’s position that AT resided with the Petitioner from April 1, 2011 - August 31, 2012, but neither the Petitioner nor AT reported his residence to the agency. There is no dispute with regard to where the Petitioner was residing. During the period of April 1, 2011 - August 31, 2012, the Petitioner resided at an apartment on [REDACTED]. In support of its position that AT resided with the Petitioner during these periods of time, the agency produced voluminous documentation including:

- CARES screen prints;
- Electronic Case Comments;
- EVFE’s dated 11/13/2012 and 2/7/13;
- ACCESS Applications.

See, Exhibits B, E, and H.

The Petitioner argues, however, that AT was not residing with her during the overpayment periods. She testified, quite credibly, that she allowed AT to use her address during times when he was homeless. She noted that he used several people’s addresses during this time. Petitioner maintained that AT has never lived with her, and in fact, he obtained a restraining order against her in Spring of 2011. Petitioner testified that AT is presently living with his sister, and has previously spent time living at his foster parents’ home and his uncle’s home.

The Petitioner and AT concede that he used her address as his mailing address since he did not have a permanent address during the overpayment period. AT produced a written statement corroborating much of Petitioner’s testimony, and further noting that,

...I used her address for Child Support. I changed it when they started saying that I live there. It became a problem with me and [Petitioner]. I have never stayed in her home. I just used her address to have a place for my mail. ... I am currently living from home to home through family members.

Exhibit R-2.

The Petitioner also provided a copy of her [REDACTED] lease, dated October, 2008, which lists Petitioner as the sole tenant. Exhibit R-3.

The Respondent countered that it had uncovered instances of simultaneous FoodShare card usage, as recently as October of 2012. While that certainly does raise questions, especially in light of Petitioner’s concession that she has purchased AT’s FoodShare card at least one time in the past, this is not a FoodShare overpayment case, and simultaneous usage does not establish residency.

In summary, I conclude that, while the Respondent has presented a prima facie case establishing an overpayment, the Petitioner has successfully rebutted the Respondent's allegations. I note that the vast majority of the documentation relied upon by the Respondent is based upon address information supplied by AT. Petitioner has no control over the information that AT provides to the Respondent, and in light of Petitioner's protestations regarding the Respondent's allegations that they lived together, this cannot succeed as the primary basis for a finding that Petitioner and AT resided together. Based on the evidence in the record, I find that the Respondent has not established an overpayment of child care benefits to the Petitioner for the period of April 1, 2011 – August 31, 2012.

CONCLUSIONS OF LAW

1. Petitioner and AT did not live together between April 1, 2011 – August 31, 2012.
2. The Respondent did not establish that it overpaid Child Care benefits to Petitioner during the period of April 1, 2011 – August 31, 2012.

THEREFORE, it is

ORDERED

That this matter be remanded to the Respondent and the Respondent shall take all of the administrative steps necessary to rescind the following Child Care overpayment claims against the Petitioner: Claim no. [REDACTED] in the amount of \$10,138.91 for the period of April 1, 2011 – December 31, 2011, and Claim no. [REDACTED] in the amount of \$9,360.83 for the period of January 1, 2012 – August 31, 2012. All actions required herein shall be completed with 10 days following issuance 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 12th day of September, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 12, 2013.

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