



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/148893

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 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 June 13, 2013, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid CC benefits of \$2,599.57 for the period of September 2, 2012 to March 31, 2013.

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: Atty. Joseph McCleer
Milwaukee Early Care Administration - MECA
Department of Children And Families
6345 N. 26th Street
Milwaukee, WI

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 and her husband, [redacted] [redacted], have at least one minor child who requires childcare while they are working. The petitioner was employed and had CC benefits paid on her

behalf from at least September 2, 2012, through March 31, 2013. For the September 2, 2012 – March 2013 period, CC exceeding \$4,000 was paid out on the household's behalf.

3. During the September 5, 2012 – February 1, 2013 period, the petitioner's husband worked weekday third shifts *every over week*, for [REDACTED]. CC was authorized as though he was working full-time every week. Exhibit R-4.
4. The petitioner's husband was not employed or participating in a W2 approved activity every other week from September 5, 2012 through February 1, 2013. He was, therefore, available to care for the petitioner's young child, AR, every other week during that period.
5. The husband began working 20 hours weekly on January 22, 2013 for the [REDACTED]. He worked Tuesday through Friday, beginning at 2:00 p.m. See, Petitioner's Exhibit A.
6. On April 10, 2013, the Department issued a CC Overpayment Notification to the petitioner, advising that she had been overpaid **\$2,759.34** for the August 26, 2012, through March 31, 2013, period, due to client error. The overpayment calculation for September 2, 2012 through January 21, 2013, authorized the petitioner for 32 hours ("sleep shift") of CC every other week, as the correct amount of CC authorized hours. Exhibit R-1. The petitioner timely appealed therefrom.
7. Subsequently, the petitioner's childcare provider acknowledged an attendance and billing error made by the provider for the August 26 – September 1, 2012 period (petitioner's child was not attending on those dates). As a result, on May 22, 2013, the Department issued a new *CC Overpayment Notification* to the petitioner advising that she had been overpaid the lower amount of **\$2,599.57** for the September 2, 2012 through March 31, 2013 period, due to client error (claim # [REDACTED]). Exhibit R-11.

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 (the responsible agency at the time) 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 is available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. AN OVERPAYMENT OCCURRED, DUE TO THE HUSBAND'S FAILURE TO BE IN A "QUALIFYING ACTIVITY" FOR ALL OF THE HOURS OF CARE PROVIDED.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation. She also acknowledges that her child AR was in child care subsidized by the Department during the period in question, and that her husband was usually not employed or participating in W2 activities, every other week, during the 9/2/2012 through 2/1/2013 portion of the overpayment period. *E.g.*, for December 2012, the CC program paid \$692.12 for care, premised on the husband working 80 hours biweekly; the overpayment amount was \$326.70 based on his actual work hours. Exhibit R-11, worksheet.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If parents do not meet the eligibility criteria, then CC cannot be granted. In this case, the agency correctly asserts that the husband's presence in the home made CC benefits unnecessary when he was not working, as he could have been the provider of free child care during those times. 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)(g)[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.

[emphasis added]

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8.

The agency verified that the husband was working every other week, rather than every week, for the 9/2/2012 through 2/1/2013 period. The petitioner argued that her husband occasionally did extra work on his "off" weeks for [REDACTED], but she offered no documentation (*e.g.*, employer letter, paystubs) to corroborate her vague assertion of extra work. Specific hours and dates of the alleged extra work were not proffered. Accordingly, I conclude that the Department made a correct determination of the overpayment as it relates to the [REDACTED] employment. This means that the overpayments totaling \$1,393.85 for September through December 2012 are correct.

Although it does not change the outcome of this case, I note that the petitioner reported that her husband was working 40 hours, rather than 80 hours, over a two-week period in October 2012. Nonetheless, the Department continued to authorize too many CC hours after receiving information that the husband was working every other week. Thus, although this may have started out as a "client error" case, it became an "agency error" case by November 2012.

The petitioner also argues that the Department has incorrectly calculated the amount of the overpayment related to her husband's employment at the [REDACTED], which began January 22, 2013. She

argues that her husband's weekday shift began at 2:00 p.m., rather than 2:30 p.m., as argued by the Department. (The petitioner's workday ends at 4:30 p.m., so the husband's start time is relevant).

The Department bases its reliance for a 2:30 start time on the record of a telephone conversation between a Department worker and a person at the Club. The petitioner relies upon a letter on Club letterhead, dated May 23, 2013, and signed by Veronica Ragland, Administrative Coordinator. The petitioner produced the better evidence on this point at hearing. Therefore, I will remand this matter back to the Department to re-calculate the amount of the overpayment for the January 22 – March 31, 2013 period, by treating the husband's employment start time as 2:00 p.m. daily.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid CC from September 2, 2012, through January 21, 2013.
2. The Department erred in its calculation of the CC overpayment for the January 22 through March 31, 2013, period, by not attributing a 2:00 p.m. job start time for the petitioner's husband.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Department with instructions to re-determine the amount of the petitioner's CC overpayment for the January 22 through March 31, 2013, period, based on Conclusion of Law #2 above. This action shall be taken within 10 days of the date of this Decision (a new overpayment notice and worksheet should be issued to the petitioner, showing this revision). In all other respects, 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 4th day of September, 2013

\sNancy J. Gagnon
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 4, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Joseph.McCleer@wisconsin.gov