



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/148898

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, a hearing was held on June 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid CC benefits of \$7,27.80 from May 2012 – March 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
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 minor children who require childcare while she is working. She was employed and had child care (CC) benefits paid on her behalf during at least May, June, July, August, October and December 2012, and March 2013. For these months, CC totaling \$7,217.80 was paid out on the petitioner's behalf.
3. On April 9, 2013, the agency issued a CC Overpayment Notification to the petitioner, advising that she had been overpaid **\$7,217.80** for the May 1, 2012, through March 31, 2013, period (claim # [REDACTED]), due to client error. Exhibit R-2. The petitioner timely appealed therefrom.
4. The petitioner was employed during the period. Because the household's gross income exceeded the 200 % federal poverty level (FPL) amount (the CC program eligibility limit) in the months listed in Finding #2, the petitioner was not eligible for any amount of CC subsidy in those months.
5. 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 bonus income. The petitioner's employer submitted an employer verification form to the department that listed the petitioner's hourly wage, but did not list bonus income.

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 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 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, she does not contest that she received earned income, and does not contest that she took her children to a daycare that received CC the subsidy payments totaled and identified in Finding #3. The petitioner did not produce any evidence to suggest that the income information used by the agency in calculating the overpayment was incorrect. Rather, she complained that her employer gave the agency incorrect information by not including her bonus income.

The 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 substantial income increase, 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 \$7,127.80 CC from 5/1/12 through 3/31/13.

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 21st day of June, 2013

\sNancy J. Gagnon
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 June 21, 2013.

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