



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/149311

PRELIMINARY RECITALS

Pursuant to a petition filed May 8, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on June 12, 2013, by telephone.

The issue for determination is whether petitioner took her children to child care after she went on maternity leave.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tamika Terrell
Milwaukee Early Care Administration
Department of Children And Families
1220 W. Vliet St., 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2012 petitioner received child care assistance for two children. In November the agency received information that petitioner went on maternity leave from her employer in September, 2012 but her children continued to attend child care.

3. The agency obtained a doctor's statement saying that petitioner began maternity leave on September 27, 2012. It received an employer verification form from the employer dated November 9 saying that petitioner's employment ended October 5, 2012. In April, 2013, the overpayment specialist received another verification form signed by the employer saying that petitioner's maternity leave began September 22, 2012. The state wage match showed that petitioner's fourth quarter, 2012 earnings were \$753.10, which is the gross income from petitioner's October 5, 2012 paycheck for the period ending September 30, 2012.
4. By a notice dated April 18, 2013, the agency informed petitioner that she was overpaid \$1,659.26 in child care from September 22 through October 31, 2012 because she took the children to care when she was not working, claim no. [REDACTED].

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. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

I have been doing hearings for almost 25 years, and every now and then I hold a hearing so bizarre that I am stunned. In this case, petitioner's employer initially verified that petitioner went on maternity leave on October 5 with a final pay date also of October 5 (which means that the final date of employment would have been no later than September 29). Exhibit D-2. Then later the same employer sent verification that maternity leave started September 22. Exhibit E-2. The employer reported to the state that petitioner's last check was the October 5 one for \$753.10, again implying that petitioner's last work date was no later than September 29. But then at the hearing the same employer testified that petitioner actually worked until October 14, and she had absolutely no explanation whatsoever why she didn't report the October 19 paycheck to the state. A review of the agency's case notes shows that petitioner did not report maternity leave until after the child was born and that there was substantial difficulty obtaining verification of when maternity leave started and whether it was paid or unpaid. See Exhibit C-1.

The whole scenario is fishy, but fishiest from the employer. It is clear that the employer erred in her reporting at some point. Either petitioner worked until October 14 and the employer failed to report to the state correctly, or petitioner did not work and any work after September 29 is fictional. (a note from

petitioner's nurse saying she worked until October 14 is of little use as the nurse would be basing the note on petitioner's statements).

In the end I will find that petitioner was not overpaid. She has a copy of a paystub dated October 19, 2013 with "T. [REDACTED] Investments Inc." letterhead, and Ms. [REDACTED] testified under oath that petitioner worked until October 14. If anything is amiss it is with Ms. [REDACTED], and I will not penalize petitioner for Ms. [REDACTED]'s implausibility. I will not consider the employment to be unlawful because Ms. [REDACTED] did not report that final check to the state, and petitioner should urge Ms. [REDACTED] to amend her income report because the amount of income reported to the state could affect future benefits for petitioner including unemployment and worker's compensation, social security, and Medicare.

I note finally that although the Shares program paid the provider for the week beginning October 21, 2012, records show that the provider reported zero hours of attendance for the children, so any overpayment was not made to petitioner. It could be that the provider was overpaid, although I do not profess to be expert on provider payment issues. It is clear that petitioner should not be responsible for that week because her children did not attend.

CONCLUSIONS OF LAW

Petitioner was not overpaid child care in late September and October, 2012 because she worked until October 14 and did not take her children to care after that week.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind overpayment claim no. [REDACTED] and to cease recovery of it, within 10 days 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 18th day of June, 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 June 18, 2013.

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