



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/149362

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 13, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on July 01, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its determination of a Child Care overpayment in the amount of \$591.08 for the period from 1/1/13 to 3/31/13.

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: Luisa McKy

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was enrolled in the Child Care Program on the basis of her employment being an approved child care activity.

3. Petitioner began maternity leave from her employer on 1/25/13 (see ex. #2 at p.3).
4. Petitioner's child continued to attend the child care provider, and the provider was paid under the Program, for attendance dates of 1/27/13 to 3/2/13. The amount paid during that time was \$591.08.
5. On 4/18/13 the Department sent petitioner a Child Care Overpayment Notification indicating liability for \$591.08.
6. Petitioner filed an appeal.

### **DISCUSSION**

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct 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 its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

The Department has established that petitioner went on maternity leave on 1/25/13 and was no longer going to the workplace and no longer was engaged in the approved activity of work.

Petitioner explained that she took her older child to day care because it was difficult to care for both children at home. She also explained that a W-2 worker informed her that she would continue getting child care for 6 weeks after her leave began.

But the program rules are clear and are written in the Manual which is available online and available at the agency for enrollees to read. Furthermore, it does not matter the reason or fault of the overpayment – petitioner received more benefits than what she was entitled to under program rules. Section 1.4.8 states that a parent must be enrolled in an approved activity to receive benefits. Approved activities are enumerated in the Manual at Section 1.5.0. Petitioner was clearly not engaged in an approved activity when she was staying home with her newborn and taking her older child to day care. She received more benefits than she should have gotten.

### **CONCLUSIONS OF LAW**

Petitioner is liable for the \$591.08 overpayment as claimed by the Department.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 12th day of September, 2013

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\sJohn P. Tedesco  
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 September 12, 2013.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud