



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/149387

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 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 via telephone June 11, 2013.

The issue for determination is whether the following Claim may be established against petitioner for an overpayment of Wisconsin Works [“W-2”] CC: Claim # [REDACTED] for the time period August 5, 2012 to February 28, 2013 (not including the months of September 2012 and October 2012) in the total amount of \$4,176.78.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Joseph McCleer, Attorney
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

OTHER PERSON PRESENT:

[REDACTED], CC Subsidy Specialist, Senior

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. MECA established the following Claim against petitioner for an overpayment of W-2 CC: Claim # [REDACTED] for the time period August 5, 2012 to February 28, 2013 (not including the months of September 2012 and October 2012) in the total amount of \$4,176.78. Exhibit #R-2.
3. During the time period of the overpayment detailed in *Finding of Fact* #2, above, petitioner had income from a 2nd job at *Maxim Health* which was not reported and which put her over the W-2 CC income limit. Exhibits #R-1, #R-2, #R-3, #R-4, #R-5, #R-6, #R-7, & #R-8.

DISCUSSION

The County or agency must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2011-12); See also, Wis. Admin. Code §§ DCF 101.23 (February 2012) & 201.04(5)(a) (April 2012); *Child Care Assistance Manual* (5/3/12) ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (April 2012); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (February 2012); CC Manual 2.1.5.1. & 2.1.5.2.

Low-income parents applying for child care assistance must have gross income at or below 185% of the Federal Poverty Level ["FPL"]. Once a family has established eligibility, gross income can rise to 200% FPL. Parents are eligible for child care assistance, until the gross income exceeds 200% FPL. Wis. Stat. § 49.155(1m)(c)1. (2011-12); CC Manual (June 2012) 1.6.2 & 1.6.3.

Petitioner does not deny that her income from her second job put her over the W-2 CC limit for the time period in question. Petitioner testified that she started her second job in May 2012, not July 2012 as indicated by MECA. See, Exhibit #R-3. This may be correct -- but makes no difference as the overpayment did not start until August 2012.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for an overpayment of W-2 CC: Claim # [REDACTED] for the time period August 5, 2012 to February 28, 2013 (not including the months of September 2012 and October 2012) in the total amount of \$4,176.78.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 29th day of July, 2013

\sSean P. Maloney
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 July 29, 2013.

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