



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/150376

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 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 July 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits from Petitioner.

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: Keisha Love

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Child Care Overpayment Notification, dated June 25, 2013, that informed Petitioner that she had been overissued child care benefits in the total amount of

\$10,008.60. Claim # [REDACTED]. The period of the overpayment is October 7, 2012 through March 31, 2013.

3. The child care benefit overissuance involved here is alleged to be client error and was a result of the allegation that the father of Petitioner's children was in the home and not in an approved activity.
4. The probation officer for the father of the children reported doing home visits with him at Petitioner's home on at least 3 occasions – October and November 2012 and January 2013. He has reported that address to his agency effective October 3, 2013.
5. The Washington County Child Support Agency reported to the Milwaukee Early Care Administration that a county attorney had been told by Petitioner in court in January 2013 that the father had been living with her for a couple of months.
6. The father of Petitioner's children was picked up on a warrant at Petitioner's home by the Milwaukee County Sheriff's Department on or about November 20, 2012.
7. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *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 or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1) (g). Adm. Code*. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1.*

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Finally, there are two other Child Care Manual provisions of particular relevance here. First:

Two-Parent Families and Three Generation Families and Participation in Approved Activities

In two-parent families both parents in the AG, including step parents and non-marital co-parents, must be participating in approved activities, unless one parent is participating in approved activities and the other parent is: 1) unable to participate in an approved activity due to a disability or health condition, and 2) is unable to care for the child (ren) so that the other parent could participate, due to a disability or health condition. The parent's inability to *both* care for their children and participate in approved activities must be verified by a doctor, psychiatrist, or psychologist.

Eligibility for child care is only for the overlapping hours when both parents are in approved activities.

Manual, § 1.4.8.2.

Second,

The Department or local agency shall take all reasonable steps necessary to recover funds paid to a client when the following, but not limited to the following occur:

- They were not eligible for the level of child care benefit they received, which resulted in an overpayment.
- A change in family eligibility occurred that would have resulted in a smaller child care benefit due to:
 - The client fails to report a change in circumstances within 10 days after the change
 - ...
 - The father of the child is living in the home, which was reported through an anonymous tip. The father is not working and is able to care for the child. The client meets all other eligibility requirements but when asked, states the father is a bum, does not help care for the child, he is moving out and she really needs child care for her child.
 - ...

Manual, §2.1.5.1 at page 19.

Here the agency contends that had Petitioner reported the father in the home it would have discontinued Petitioner's child care as he was not engaged in an approved activity. Petitioner maintains that the father was just using the address as a mailing address.

While the statements of the Washington County Child Support Agency and probation officer (PO) statements are hearsay they do support each other. Both are credible government sources. These statements are also supported by the November 2012 warrant pick up at Petitioner's residence. Further, Petitioner allows that the father was using her address. That he was just using it for mailing is not credible in the face of the child support attorney and PO statements and the arrest on the warrant.

I am, therefore, sustaining the overpayment but with one potential change. Petitioner did indicate that the father had been incarcerated for about two months during the time in question. There is some support for that in that he was arrested on the warrant in November 2012 but Petitioner did not provide details as to how long he may have been incarcerated. This is, however, something that the agency can easily verify.

CONCLUSIONS OF LAW

That the evidence demonstrates that the father of Petitioner's children was living with Petitioner during the time alleged but for a possible period of incarceration; thus Petitioner was overissued child care benefits for the time he was not incarcerated during the period involved here.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to take the steps necessary to determine if the father of Petitioner's children was incarcerated during the period from October 7, 2012 through March 31, 2013 and, if so, to make any necessary adjustments to the overpayment alleged here. This must be done within 10 days of the date 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 Milwaukee,
Wisconsin, this 21st day of October, 2013

\sDavid D. Fleming
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 October 21, 2013.

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