FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/150460

PRELIMINARY RECITALS

Pursuant to a petition filed July 03, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Forest County Department of Social Services in regard to Child Care, a telephone hearing was held on August 13, 2013.

The issue for determination is whether a claim may be established against petitioner for an overpayment of W-2 Child Care (CC) in the total amount of $1,377.00 for the time period of January 29, 2012, through July 28, 2012 (Claim Number [redacted]).

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Mary Hietpas
Forest County Department of Social Services
200 E. Madison Street
Crandon, WI 54520

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Forest County.

2. Petitioner was overpaid W-2 Child Care in the total amount of $1,377.00 for the time period of January 29, 2012, through July 28, 2012 (Claim Number [redacted]) because she was not participating in an approved activity.

3. Petitioner was employed at [redacted] during the time period of the overpayment; petitioner used CC during the time period of the overpayment.

4. [redacted] does not meet federal minimum wage requirements, and therefore [redacted] is not a qualified employer.

DISCUSSION

The County 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) (2009-10); See also Wis. Admin. Code §§ DCF 101.23 (November 2008) & 201.04(5)(a) (September 2010); *Child Care Assistance Manual* 2.3.1.

A person is eligible for W-2 CC only if the person is participating in an approved activity. *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2009-10); Wis. Admin. Code § DCF 101.26(1); Wis. Admin. Code § DCF 201.04(5)(a)2.b; *Child Care Assistance Manual* 1.5.0.

As outlined below (1.5.3.1), if employment appears questionable, the CC agency may request verification as to whether an employer meets the definition of a qualified employer. A qualified employer must meet federal minimum wage requirements. Petitioner is paid $3.00 per hour. Tip income is not reported, nor included on petitioner's paystubs. Petitioner's employer has not verified that it complies with federal minimum wage requirements, i.e., CC agency has no way to verify actual amount of petitioner's income, which includes tips, to determine that petitioner's employer is paying at least a minimum wage. The petitioner has failed to verify that [redacted] meets federal minimum wage requirements. Therefore, it is not a qualified employer. It follows that petitioner was not in an approved activity during the time of the overpayment. For this reason, the overpayment must be affirmed.

> **1.5.3 Unsubsidized Employment**
> Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.
> The Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting non-financial eligibility criteria and for receiving assistance as either:
> 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
> 2) Being legitimately self-employed.
>
> All hours per week of unsubsidized employment, the schedule shift if second or third, and hours allocated for transportation must be documented in CARES Worker Web in case comments, on the employment page or in the Electronic Case File to substantiate the need for the child care assistance hours authorized. Indicate if the hours vary on a weekly basis. Documenting employment schedules is required for both types of unsubsidized employment: working for a qualified employer or legitimate self-employment. If a qualified employer has provided verification of the individual's hours per week of employment there is no need for them to also provide verification of a work schedule unless the worker finds the employment questionable.
> The program definitions for "qualified employers" and "legitimate self-employment" are described below and reflect current Wisconsin Wage and Unemployment Insurance law:
>
> **1.5.3.1 Qualified Employers**
> All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete. If the

> FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.
> Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews.)
> If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.
>
> The employer must have a Worker's Compensation insurance policy for its employees.
>
> The employer must comply with Wisconsin minimum wage law for all employees.
>
> The employer must file a New Hire report on the employee within thirty days of the hiring date.
>
> The employer must report wages to Unemployment Insurance unless exempt.

Child Care Assistance Manual 1.5.3.; *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2009-10); Wis. Admin. Code § DCF 101.26(1) (November 2008); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (September 2010).

Petitioner argues that the overpayment is not her fault because it was [redacted], and not her, that failed to comply with Wisconsin minimum wage law. Petitioner noted that she always provided her employer with tip income amounts, and that she was never aware that she was supposed to earn a minimum wage, when her tip income and hourly wages are added together.

The respondent acknowledges the administrative error here in determining petitioner to be eligible, when she was not. However, even where the overpayment is not petitioner's fault it must still be repaid. Wis. Admin. Code § DCF 101.23(3); *See also*, Wis. Admin. Code § DCF 201.04(5)(a)1. A CC overpayment is any 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 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation. Wis. Admin. Code § DCF 101.23(1)(g) (November 2008); *Child Care Assistance Manual* 2.3.1 (emphasis added).

CONCLUSIONS OF LAW

For the reasons discussed above, a claim may be established against petitioner for an overpayment of W-2 CC in the total amount of $1,377.00 for the time period of January 29, 2012, through July 28, 2012 (Claim Number [redacted]), as the respondent incorrectly determined petitioner's eligibility while petitioner was not engaged in an approved activity.

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 16th day of October, 2013

_____

\sPeter McCombs
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 16, 2013.

Forest County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud