FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/150610

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Crawford County Dept. of Human Services to recover child care assistance, a hearing was held on August 22, 2013, by telephone.

The issue for determination is whether petitioner's husband lived with her during the period January 1, 2012 through February 28, 2013.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Mandy Chesebro
Crawford County Dept. of Human Services
225 N Beaumont Rd., Suite 326
[redacted], WI 53821

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Crawford County.
2. Petitioner received child care assistance for her younger child in Crawford County in 2012 and 2013. In early 2013 the county began an investigation concerning the residence of the children's father. After the investigation the county concluded that the father (petitioner's ex-husband) lived in the residence. After obtaining his income information, the county informed petitioner by a

notice dated June 19, 2013 that she was overpaid $393.86 in child care from September 30, 2012 through February 28, 2012, claim no. [redacted].

3. Petitioner was divorced in 2007. She had her second child with her ex-husband in 2010. Although there is a child support order in Illinois for the first child, no child support case was filed for the second child.

4. Petitioner resides in a home valued at $330,000, owned by family friends. She reports that she pays $300 per month rent and does the maintenance and cleaning, and she acknowledges that her ex-husband actually pays her the $300 monthly for the rent. She reported that her ex-husband resided in a room in a [redacted] owned by his sister.

5. Petitioner's ex-husband, throughout this period, consistently spent time at the home. He did the maintenance including lawn mowing. He gave that address when he was stopped for speeding in December, 2012, and he used that address in business relationships (specifically with Snap-On Tools). He operates an [redacted] in [redacted]; petitioner and he were listed as co-owners with city in 2011, but their names were taken off the city record in 2012 and replaced by the names of his parents.

6. Neighbors believe that petitioner and her ex-husband live together at her address. School records have them at that address.

7. The county added petitioner's ex-husband to her case beginning April 1, 2013. She continued to be eligible for child care, but past child care would have been lower if his income had been counted.

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.

The Wisconsin Shares Child Care Manual, Chapter 1, §1.2.0 defines the family group that must be included in a child care application:

> an individual who is a custodial parent or placement parent and their dependent children and all dependent children with respect to whom the individual's dependent child is a custodial parent. Family or Family Group includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.

In the same section a "custodial parent" is defined as a parent who lived with the child. Important for this case is that the issue is not the relationship between the parents, but the relationship between parent and child.

Petitioner acknowledges that because of cultural and religious beliefs she and her ex-husband hold themselves out as a couple to the community and to their neighbors. She thus was not surprised that neighbors believed that they live together. In 2011 when the lube shop opened they took out an ad in the local paper that implied that they were an intact family, and thus I have no problem finding that to the community they were an intact family. Clearly petitioner's ex-husband has been unhindered in reporting that he lives at the house, and it is clear that he is actively involved with his two children on a regular basis (a January, 2103 Facebook post from him states "I can never sleep when the girls aren't with me"). He pays the rent at petitioner's home.

I conclude that the county correctly determined that petitioner's ex-husband should have been included on her case throughout 2012 and into 2013. Petitioner probably thought legitimately that her ex-husband did not need to be on the case because she considered herself to be separated from him (again, however, Facebook posts by both after New Year's Eve described what appeared to be an ongoing relationship, and they admit to taking a trip to Las Vegas together in June, 2013). However, it is evident that petitioner and her ex-husband essentially live with their two children even if they are not in a relationship themselves, and thus both should have been on the case.

CONCLUSIONS OF LAW

Petitioner's ex-husband should have been included on her child care case in 2012 and 2013 because he essentially was living with the family even though he and petitioner are divorced, and thus petitioner was overpaid child care assistance because his income was not budgeted for assistance purposes.

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 August, 2013

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\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 August 29, 2013.

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