



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/150613

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 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 hearing was held on August 13, 2013, at Crandon, Wisconsin.

The issue for determination is whether the respondent correctly established an overpayment of Child Care benefits to 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: Mary Heitpas

Forest County Department of Social Services
200 E. Madison Street
Crandon, WI 54520

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. Petitioner received Child Care benefits during the period of September 16, 2012, through December 29, 2012.

3. Between September 16, 2012, and December 29, 2012, petitioner was an enrolled student, and worked as a tutor for [REDACTED].
4. Ms. [REDACTED] is not a qualified employer.
5. Because petitioner was not employed by a qualified employer, the respondent determined that it erred in determining that she was eligible for Child Care benefits during the period of September 16, 2012, through December 29, 2012.
6. On June 12, 2013, the respondent issued a Child Care Client Overpayment Notice to the petitioner identifying an overpayment of benefits in the amount of \$1,655.00 for the period of September 16, 2012, through December 29, 2012.

DISCUSSION

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See, Child Care Policy Manual (Manual), §1.5.0, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. 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. Id. According to the respondent, the petitioner did not work for a qualified employer while enrolled in school.

According to the child care policy, the Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting the non-financial eligibility criteria and for receiving assistance: 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or 2) Being legitimately self-employed. See Manual, §1.5.3. In order to be considered a Qualified Employer, the employer must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete, the employer must have a Worker's Compensation insurance policy for its employees unless legally exempt, 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, and the employer must report wages to Unemployment Insurance unless exempt. See Manual §1.5.3.1.

Petitioner informed the respondent that she was employed as a tutor by Ms. [REDACTED]. The respondent acknowledges receipt of this information, and concedes that it erred in granting benefits on this information because Ms. [REDACTED] was not a qualified employer. As the petitioner was not employed by a qualified employer, she should not have qualified for benefits.

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. Adm. 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. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. For a student in higher education to be eligible for child care, there are a number of specific requirements, including that she must work for a qualified employer.

The petitioner does not dispute the overpayment calculations, but argues that the overpayment constitutes an unfair imposition of liability. She testified that she is unable to afford a repayment of this amount. I understand the hardship the county's error causes the petitioner. Nevertheless, recovery of Child Care overpayments is mandated by Wis. Adm. Code, §DCF 101.23. Recipients must repay overpayments even when, as here, the fault rests solely with the county agency. Administrative law judges have no equitable powers that would allow them to consider the fairness of a situation. Therefore, I must uphold the agency's finding that the petitioner must repay the \$1,655.00 in Child Care benefits that she was not entitled to receive.

CONCLUSIONS OF LAW

The county correctly determined a child care overpayment because petitioner was not working for a qualified employer during the overpayment period.

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 1st day of November, 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 November 1, 2013.

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