



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/150773

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 17, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Douglas County Department of Human Services in regard to Child Care, a hearing was held on August 28, 2013, at Superior, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Child Care assistance that occurred because of the agency's error.

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: Tom Ostrander

Douglas County Department of Human Services  
1316 North 14Th Street  
Suite 400  
Superior, WI 54880

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) resides in Douglas County with her three minor children.
2. The petitioner applied for BadgerCare Plus, FoodShare, and Child Care assistance on January 23, 2013. Because the income she reported apparently exceeded the limit for each of these programs,

the Department's computer would not issue a request for verification. The worker manually indicated that the petitioner earned \$2,000 a month, a dummy amount, so that the verification request would be issued.

3. When determining the petitioner's benefits, the agency inadvertently continued to use the \$2,000 dummy amount it had entered into the system.
4. From January through June 2013, the petitioner received \$6,302 in Child Care assistance.
5. The county agency seeks to recover all of the Child Care Benefits provided to the petitioner from January through June 2013 because it contends that her income exceeded the program's limit throughout the period.
6. The county agency has provided no proof of the petitioner's income.

### **DISCUSSION**

Child Care Benefits are provided to W-2 participants who are working, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The income limit for new applicants is 185% of the federal poverty level and 200% of federal poverty level "for an individual who is already receiving a child care subsidy." Wis. Stat. § 49.155(1m)(c)1. The W-2 statute requires the department to recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

The petitioner applied for Child Care assistance in January 2013. When it attempted to send a request to verify the petitioner's income, the computer program the Department uses to determine eligibility would not do so, apparently because the income the agency used was over the program's limit. Rather than deny benefits at this point, the agency put a lower dummy amount—\$2,000—into the system. Then, when determining her eligibility, it inadvertently used the dummy amount rather than her actual income. The petitioner was found eligible and received \$6,302 in benefits from January through June 2013. The agency now contends that her income exceeded 185% of the federal poverty level throughout this period and seeks to recover the entire amount. The petitioner objects because she had free alternate childcare available that she would have used if she had been found ineligible.

As indicated earlier, the agency must recover all overpayments regardless of who is at fault. But this requirement does not relieve it of its obligation to prove that the petitioner received an overpayment. It submitted no documentation of the overpayment before or during the hearing. I allowed it to submit documentation after the hearing, even though this prevented the petitioner from meaningfully responding. It did document the amount of benefits it provided to her, but even then it failed to provide any evidence such as wage matches or paystubs proving how much she earned. The agency has the burden of proving by the preponderance of the credible evidence that an overpayment exists. Because its entire case depends upon demonstrating that she earned over 185% of the federal poverty level each month, without such proof, its claim must fail.

**CONCLUSIONS OF LAW**

The county agency cannot recover the Child Care Benefits provided to the petitioner from January through June 2013 because it has not proven by the preponderance of the credible evidence that her income exceeded the program's limit.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to remove the finding from the Department's records that the petitioner was overpaid \$6,302 in Child Care Benefits from January through June 2013 and that it end any attempt to recover these benefits.

**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 6th day of September, 2013

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\sMichael D. O'Brien  
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 September 6, 2013.

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