



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/151060

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 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 August 22, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether the agency correctly seeks to recover an overissuance of child care benefits from Petitioner and, if so, is the amount correct.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tamika Terrell

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 # ) is a resident of Milwaukee County.
2. Petitioner's is a household/group size of 2.

3. The agency sent Petitioner a Child Care Overpayment Notification, dated July 9, 2013, that informed Petitioner that she had been overissued child care benefits in the total amount of \$1356.77. Claim # [REDACTED]. The period of the overpayment is November and December 2012.
4. The child care benefit overissuance involved here is that household income was in excess of program limits.
5. Petitioner is employed and had overtime earnings in November and December 2012. Her gross earnings for November were \$3293.40 and for December - \$2530.71.
6. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.
7. 200% of the FPL for a group of two during November and December 2012 was \$ 2522.00; 185% was \$2333.00. Operations Memo 12-06; issued and effective 2/1/12.

### 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.

There is an income test for child care eligibility, both at application and for ongoing eligibility. While initial eligibility requires income below 185% of the Federal Poverty level, to maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual), §1.6.3*. As Petitioner’s case was ongoing it is the 200% of the Federal Poverty Level

(FPL) test that is to be applied. Again, 200% of the FPL for a group of 2 during the period involved here was \$2522.00. See *Operations Memo 12-06, issued and effective February 1, 2012.*

I also note that there are reporting requirements:

#### **1.15.1 Reporting Requirements**

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

#### **1.15.2 Examples of Required Information to be Reported**

Examples of some of the information that parents are required to report include:

A change in the scheduled approved activity hours

A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

*Manual, §§1.15.1 and 1.15.2.*

Petitioner's income exceeded 200% of the FPL for November 2012 as a result of overtime. This is not a case where Petitioner would have known how much she was going to earn prior to actually earning it. She had 10 days to report that but did not do so. She would have known this by the 11/21/2012 paycheck and should have reported it to the Department. Per the Manual if a change is not reported timely the overpayment begins the first full week after the change:

Overpayment periods for changes related to eligibility:

If the change was reported timely, it should be applied five business days following the date it was reported. If the date it was reported plus the five business days is prior to adverse action, the overpayment period begins the first of the following month as eligibility should have ended at the end of the current month.

If the change is not reported timely, the change should be considered effective the date of the change. The overpayment period would begin the first full week following the change.

*Manual, Chapter 2A, § 2.1.5.1 at page 17.*

Here Petitioner's November 21, 2012 paycheck put her over 200% of the FPL. She did not report that; thus the period of the overissuance starts the first full week after November 21.

### **CONCLUSIONS OF LAW**

That the evidence demonstrates that Petitioner's household income was in excess of 200% of the FPL as of November 21, 2012 and, as it was not reported by Petitioner, the overpayment begins the first full week following November 21, 2012.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to amend the start date and the amount of the claim # [REDACTED] to reflect a start date for the overpayment of the first full week after November 21, 2013. This must be done within 10 days of the date of this order.

In all other respects, this case is 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 Milwaukee,  
Wisconsin, this 21st day of November, 2013

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\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 November 21, 2013.

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