



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/151128

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on September 12, 2013, at Kenosha, Wisconsin. The record was held open for five days post-hearing to allow the Petitioner to submit additional information. On September 16, 2013, the Petitioner submitted additional information. The record was closed on September 17, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,933 for the period of September 30, 2012 – April 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.

2. On August 25, 2012, the Petitioner married NR. She reported her marriage to the agency on September 13, 2012. NR was added to the Petitioner's case.
3. On September 25, 2012, Petitioner contacted the agency to request BadgerCare and child care benefits for her granddaughter LG. She reported at that time that her husband did not live with her due to legal issues.
4. On October 5, 2012, Petitioner was authorized for child care benefits for LG for the period of September, 2012 – March 2, 2013. NR's income was not budgeted in gross household income.
5. On February 19, 2013, the agency processed the Petitioner's Six Month Renewal. Petitioner reported NR back in the home. On February 21, 2013, the Petitioner completed an interview with the agency for her renewal. She requested child care for LG. She reported NR is not in the home because of a court order.
6. On April 5, 2013, Petitioner reported NR has lived with her since March 25, 2013. She reported his employment. NR's probation officer reported to the agency that he lives with the Petitioner 3 – 4 times/week.
7. On April 11, 2013, the agency received a letter verifying NR is living in the Petitioner's home.
8. NR's income for the 1st quarter of 2013 was \$12,440.16. His income for the fourth quarter of 2012 was \$12,550.78.
9. On July 24, 2013, the agency issued a Child Care Overpayment Notification and worksheets informing the Petitioner that the agency determined she received an overpayment of child care benefits in the amount of \$2,933.06 for the period of September 30, 2012 – April 30, 2013 due to client error in not reporting NR's income.

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 12.23. 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 12.23(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 W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a). The Wisconsin Shares Child Care Manual (Manual), §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.

To determine eligibility for Wisconsin Shares child care benefits, the agency is required to count all available earned and unearned income of all assistance group members except for minors and dependent 18 year olds. Manual, §1.6.4.

The issue in this case is the residence of NR, Petitioner's husband. At the hearing, the Petitioner testified that NR lived with her "off and on" since their marriage on August 25, 2012. She stated that there was an unresolved issue with a no contact order and because of that, he did not reside with her "officially" until March 25, 2013. She conceded he stayed at her home approximately 3 times/week until then. This was verified by agency contact with NR's probation officer. Petitioner also testified that NR stayed with the children while she was at school or work.

Petitioner asserts that because NR did not live with her full-time from August 25, 2012 – March 25, 2013, he should not be counted as part of the assistance group and his income should not be budgeted in determining whether she was eligible for child care benefits for her granddaughter during that period.

I do not find merit in the Petitioner's argument. Though he was not residing with her full-time, NR was residing there at least part-time and presumably his income was available and used for the benefit of the household.

The gross income limit for a household of five was \$4,502 for the period of August, 2012 – January 31, 2013 and \$4,595 for the period of February 1, 2013 – April 30, 2013. NR's gross monthly income for the period of August, 2012 – December, 2012 was \$4,183 based on the state wage record. Petitioner did not dispute the agency's calculations of her gross monthly income. With NR's income, the Petitioner's household income during this period was calculated as \$2,280 through November 30, 2012 and \$2,438.96 effective December 1, 2012. Total household income exceeded the gross income limit of \$4,502, making Petitioner ineligible to receive child care benefits for LG for that period.

For the period of January 1, 2013 – March 30, 2013, his gross monthly income was \$4,146 based on the state wage record. Petitioner's income was budgeted as \$2,605.28. Total household income exceeded the gross income limit of \$4,502 for January, 2013 and \$4,595 for February and March, 2013, making Petitioner ineligible to receive child care benefits for LG for that period.

For the period of April 1 – 30, 2013, the agency did not provide evidence of NR's income. Therefore, the agency did not meet its burden of demonstrating that Petitioner's household income for April 1 – 30, 2013 exceeded the gross income limit. The child care benefits issued on behalf of LG for that period was \$169.32. Because the agency did not demonstrate that household income exceeded the gross income limit for that period, the agency must revise the overpayment period to September 30, 2012 – March 31, 2013 and reduce the amount of the overpayment by \$169.32 to a total overpayment of \$2,763.68.

CONCLUSIONS OF LAW

The agency may recover an overissuance of child care benefits for the period of September 30, 2012 – March 31, 2013 in the amount of \$2,763.68.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period to September 30, 2012 – March 31, 2013 and revise the amount of the overpayment to \$2,763.68. This action shall be taken within 10 days of the date of this decision.

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 22nd day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 22, 2013.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud