



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151129

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on September 23, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its determination of a Child Care Program (CC) overpayment in the amount of \$8,220.80.

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: Michelle Furr

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. Petitioner was a participant in the child care program. Her approved activity was participation in the FoodShare Employment and Training (FSET) Program. Participants in FSET are required to attend job club every two weeks, and turn in job logs at the job club meetings.
3. Petitioner complied with the participation requirement for FSET until 1/24/13 when she last attended job club before a lapse.
4. Petitioner's next job club attendance was on March 13, 2013. She turned in job logs at that time.
5. Petitioner next attended job club on June 5, 2013.
6. On June 26, 2013, the Department sent notice to petitioner informing her of liability for a CC overpayment in the amount of \$8,220.80 for the period from 1/1/13 to 5/31/13.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. 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. See Wis. Stat. §49.155(1m)(a).

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.

Petitioner's only argument at the hearing was that the overpayment is error because the non-participation determined by the Department was not entirely accurate. She claims that she did attend job club and never stopped going. But, in the next sentence, petitioner stated that she want more than once during the overpayment period. She could not specify when she went and could not support this claim with any details or documentation. The Department, however, does appear to document participation and attendance in case notes with narrative entries providing details of each occurrence. The case comments support the Department's contention that petitioner attended only once during the overpayment period, and that the one visit was a re-orientation to the program due to the period

of non-attendance from 1/24/13 to 3/13/13. The record supports substantial non-compliance with the requirements of the FSET program from 1/24/13 to 6/5/13.

CONCLUSIONS OF LAW

The Department did not err in its determination of an overpayment.

THEREFORE, it is **ORDERED**

That this appeal 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 Madison,
Wisconsin, this 21st day of November, 2013

\sJohn P. Tedesco
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.

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