



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151669

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 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 November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was overpaid child care benefits between July 4, 2010 and March 31, 2012.

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: Attorney Joseph McCleer
DCF-Office of Legal Counsel
635 N. 26th Street, 1st Floor
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 30, 2013, the agency sent Petitioner a manual Child Care Client Overpayment Notice, BV referral number [REDACTED], indicating that she was over paid child care benefits in the amount of \$704.00 between July 4, 2010 and August 31, 2010. (Respondent Exhibit 1, pg. 33)

- The agency sent an automated notice of the same on July 31, 2013. (Respondent Exhibit 1, pgs. 48-49)
3. On July 30, 2013, the agency sent Petitioner a second, manual Child Care Overpayment Notice, BV referral number [REDACTED], indicating that she was overpaid child care benefits in the amount of \$6503.12 between May 1, 2011 and August 31, 2011. (Respondent Exhibit 1, pg. 36) The agency sent an automated notice of the same on July 31, 2013. (Respondent Exhibit 1, pgs. 50-51)
 4. On July 30, 2013, the agency sent Petitioner a third, manual Child Care Overpayment Notice, BV referral number [REDACTED], indicating that she was overpaid child care benefits in the amount of \$980.00 for the period of February 26, 2012 to March 31, 2012. (Respondent Exhibit 1, pg. 39) The agency sent an automated notice of the same on July 31, 2013. (Respondent's Exhibit 1, pgs. 52-53)
 5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 27, 2013. (Exhibit 2)
 6. Petitioner and MT, the father of her children were living together during the time in question. (Respondent Exhibit 4, pgs. 93-94, 97-98 and 109)

DISCUSSION

An overpayment of childcare benefits occurs when the agency pays benefits in an amount greater than what the recipient was eligible to receive. *Wis. Admin. Code DCF 101.23(1)(g)*

Liability for overpayments, "shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b)*.

In determining eligibility for child care assistance, income of all assistance group members, except for minors and dependent 18 year olds, must be counted. *CCM §1.6.4*

"Assistance Groups are defined as 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...The Assistance Group also 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." *Wisconsin Shares Child Care Assistance Manual (CCM) §1.3.8*

The agency contends Petitioner is liable for an overpayment, because Petitioner lived with MT, the father of her children, during the time in question. It is also the agency's position that had Petitioner included MT in her assistance group, her benefits would either have been reduced or terminated because of the increase in household income.

Petitioner does not dispute the fact that she received child care benefits between July 4, 2010 and March 31, 2012, nor does she contest the agency's calculation of the overpayment. However, Petitioner denies the agency's assertion that she was living with MT during the time in question.

The documentation in the record overwhelmingly supports the agency's contention that Petitioner was living with SB during the time in question. First, Petitioner and MT signed a lease together for a residence on [REDACTED], which ran from June 28, 2010 to June 30, 2011. (Respondent's Exhibit 4, pgs. 97-98). Second, Petitioner and MT signed a lease together for a residence on Glenbrook Road that ran from July 1, 2011 through June 30, 2012. (Respondent's Exhibit 4, pgs. 93-94) Third, when Petitioner and

MT went to court for paternity cases on November 13, 2012, Petitioner indicated that MT and she had been living together for the past seven years. (Respondent's Exhibit 4, pgs. 109-111) Petitioner stood by her statement that MT and she had been living together, even when faced with questions about what she reported to public assistance agencies. (Id.)

Although both Petitioner and MT testified that they have had a troubled, on again/off again relationship and were not always living together, very little weight can be given to their testimony. When asked what happened in court on November 13, 2012, MT testified unconvincingly that he did not recall. He also could not recall with any remote detail when Petitioner and he did or did not live together. Further, Petitioner admitted in her testimony that she will lie about her living arrangements when it is convenient. I note that Petitioner testified that it was she who moved in and out of the residence, but she reported to the court in November 2012, that it was MT who she reported out of the home for a short period, even though they continued to live together. (See Respondent's Exhibit 4, pgs. 109-111)

Based upon all of the foregoing, it is found that the agency has met its burden to prove that Petitioner and SB were living together during the time in question and that they were overpaid child care benefits.

CONCLUSIONS OF LAW

That the agency correctly determined that Petitioner was overpaid childcare benefits between July 4, 2010 and March 31, 2012.

THEREFORE, it is

ORDERED

That the petition 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 9th day of December, 2013.

\sMayumi M. Ishii
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 December 9, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
joseph.mccleer@wisconsin.gov