



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/151938

PRELIMINARY RECITALS

Pursuant to a petition filed September 9, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on October 9, 2013, by telephone.

The issue for determination is the amount of a child care overpayment issued to petitioner.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Tameka Terrell
Milwaukee Early Care Administration
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. In early 2013 petitioner was receiving child care assistance to work at [redacted]. She lost that job on January 13, 2013, but she did not report the change to the agency. She continued to take her children to child care.
3. In the summer the agency discovered that petitioner no longer worked at [redacted]. It found that petitioner was working part-time as a crossing guard with the City of Milwaukee. It determined a

child care overpayment by taking total child care payments and crediting petitioner for the hours worked as a crossing guard.

4. By a notice dated August 23, 2013, the agency informed petitioner that she was overpaid \$8,972.15 in child care from January 14 through June 30, 2013, claim no. [REDACTED].
5. At the hearing petitioner brought proof that she was attending school during the spring, 2013 semester. The agency worker gave her credit for the school hours during the months of January through May, 2013 because she was working 20 hours per month. The worker reduced the overpayment to \$4,934.56 after crediting hours in which petitioner was in school and had the children at child care. The remaining overpayment was for hours during which the children were in child care but petitioner was neither in school nor working as a crossing guard.

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 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. Wis. Admin. Code, §DCF 101.23(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 Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

Petitioner does not contest that she failed to report the lost job. She instead provided evidence that she was going to school during the period, and Ms. Terrell gave her credit for the school hours in recalculating the overpayment. Thus I will dismiss the appeal because petitioner's issue – that she was going to school – has been resolved, and the agency already has changed the claim amount. If petitioner disagrees with the recalculation done by Ms. Terrell, petitioner can file a new appeal on the recalculation.

CONCLUSIONS OF LAW

Petitioner was overpaid child care after her job ended, but the claim is less than original because petitioner was attending an approved activity for part of the time after the job ended; the change in the claim amount already has been processed.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 17th day of October, 2013

\sBrian C. Schneider
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 October 17, 2013.

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