



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151980

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 whether petitioner failed to report that the father of her children lived with her for child care purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Keisha Love
Milwaukee Early Care Administration
1220 W. Vliet St., 200 East
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. Petitioner received child care assistance for her now two-year-old daughter. In late 2012 the agency began an investigation because it received information that the child's father, D.R., lived with petitioner although she alleged that he did not.
3. The investigation concluded that D.R. lived with petitioner.

4. Petitioner lives in a home owned by her parents. When the investigator went to the home, D.R. answered the door. He told the investigator that he was there just to babysit the child, but that he lived with his brother. He did not know his brother's address.
5. The investigator also spoke with petitioner's father. Her father said that D.R. stayed with petitioner off and on, but offered no alternative address.
6. A neighbor told the investigator that a couple and their child had lived at the address for approximately one and a half year.
7. D.R. has used petitioner's address exclusively since 2011, including registering to vote at that address, reporting that address to employers and to the child support agency. Court records list him at that address.
8. For unclear reasons the agency did not add D.R. to petitioner's case immediately, and petitioner continued to receive child care into 2013. In March petitioner filed a "non-resident affidavit" saying that D.R. did not live with her, and her case was re-confirmed at that time.
9. In August, 2013, using state wage match records, the agency determined that if D.R. had been added to petitioner's case, the household would have been over the child care assistance limit beginning in January, 2013 through June 30, 2013. \$4,402.78 had been paid for child care assistance during that period.
10. Petitioner added D.R. to her case voluntarily on July 23, 2013.
11. By a notice dated August 23, 2013, the agency informed petitioner that she was overpaid \$4,402.78 in child care assistance during the period January 6 through June 30, 2013 because she failed to report accurate household members, claim no. [REDACTED].

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. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

The issue is whether D.R. lived with petitioner. She did not dispute that the couple's income would have put them over the child care limit during the period in question.

Petitioner testified that she “brought” D.R. from Michigan with her, but that they did not get along. She testified further that D.R. had been living in [REDACTED] with her parents, and that he came to her house occasionally to see the child. He is not on her lease. They did get together again in July, 2013, and she reported him in the home then.

The problem for petitioner is that every aspect of this case points to the couple living together. First, petitioner’s lease is of little use since her parents are the landlords. Where he actually lives is conveniently unverifiable. He told the investigator that he lived with his brother. Her father told the investigator that he did not know where D.R. lived. Petitioner testified that D.R. lived with her parents. In the meantime D.R. utilized petitioner’s address in every facet of his life. If D.R. lived with petitioner’s parents, why not use their address?

There are certain indications that I have seen over the years that tell me whether a client is being untruthful about the co-parent’s living situation. Letting him use her address for mail is one such indication. Having no credible alternate address is another, and in particular when the estranged co-parent allegedly is living with the petitioner’s relatives. Another is reporting the person back in the home when the petitioner realizes that the agency is taking a negative action. Having no other credible witness is yet another (petitioner testified that her father wanted to be at the hearing but could not make it; it is astounding how often key witnesses are unable to attend the hearing in cases such as this). Finally, it is surprising how often the allegedly estranged co-parent is at the residence when the investigator arrives unexpectedly.

I admit that I am troubled by one aspect of this case. The investigation took place in December, but the agency continued to grant petitioner child care as a two-person household for six more months after the conclusion that D.R. was present in the home, even allowing petitioner to file an affidavit that he was not there to continue eligibility. If overpayments could not be collected if made due to agency error, I would definitely call this agency error. However, overpayments must be recovered even if caused by agency error.

Finally, petitioner reported that D.R. now has a child support order. However, it appears that the change of address and child support order occurred sometime after the events in this case, apparently in the summer of 2013. That he reported living at the parents’ address in [REDACTED] does not lend much credibility, and besides that, petitioner reported him in her home soon after. The simple fact is that petitioner has not provided any credible evidence that D.R. lived anywhere but with her in 2013. If there was a separation at all, it was one of convenience to keep child care eligibility.

I conclude, therefore, that petitioner was overpaid child care assistance as alleged because D.R. should have been included in her household, and had he been so, the household would have been over the child care income limit during the period in question.

CONCLUSIONS OF LAW

Petitioner was overpaid child care because she failed to include the father of her child in her household when he in fact was living in the household.

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 14th day of October, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne ■ Wiedenhoef, Acting 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 October 14, 2013.

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