



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/152012

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 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 October 10, 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.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: LaReina Horton, Child Care Subsidy Specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

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 August 30, 2013, the agency sent to Petitioner and her spouse notices indicating that they were overpaid child care benefits in the amount of \$7,295.60 for the period of 10/01/2012 to 12/31/2012. (Exhibit 3, pgs. 9-11)
3. Petitioner and her spouse filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 10, 2013. (Exhibit 1)
4. Petitioner's spouse owns and operates a business called [REDACTED]. Effective April 2012, Petitioner's spouse incorporated the business and became an employee. (Testimony of Petitioner's spouse)
5. Petitioner completed an on-line renewal for health care on March 17, 2012 and reported that her spouse started work for [REDACTED] in March 2012, with no earnings per month. (Exhibit 3, pg. 33)
6. On September 12, 2012, Petitioner completed review for child care by phone, at which time she reported that her husband was receiving \$400 per month in earnings from [REDACTED]. (Exhibit 3, pgs. 22 and 53)
7. In 2012, [REDACTED] paid Petitioner's husband \$18,000. (Testimony of Petitioner's Spouse; Exhibit 2, pg. 9)
8. [REDACTED] reported this as wages paid during the fourth quarter (October – December) of 2012. (Exhibit 3, pg. 19)
9. As of at least February 2013, [REDACTED] paid Petitioner's husband in two paychecks per month, \$1250 per paycheck. (Exhibit 3, pgs. 92, 93, 98 and 99)

DISCUSSION

I. JURISDICTION

All child care 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. Wis. Stat § 49.155(1). Prior to January 1, 2004, 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. *Wisconsin Share Child Care Assistance Manual*, §2.1.5.3 See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. INCOME LIMITS

Petitioner did not dispute the fact that her husband and she used child care benefits in the amounts stated by the agency. However, Petitioner disagreed with the agency's determination of her household income.

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.6.2 For on-going

eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.6.3 Income is evaluated on the basis of prospectively budgeted gross monthly income. *Id.* at §1.6.4

This case concerns on-going benefits. (Respondent's Exhibit 8) As such, in order for Petitioner to be eligible for benefits during the period of October 1, 2012 through December 31, 2013, her household income needed to be at or below 200% FPL, which for an assistance group size of 5, in 2012 was \$4502.00 per month. See <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>

Ms. Horton testified that the agency looked at the state wage record to determine Petitioner's income and that it showed her husband's fourth quarter income from [REDACTED] to be \$18,000. (Exhibit 3, pg. 19) Petitioner's husband testified that the \$18,000 was reported to the state in error and that \$18,000 was his income for the entire year, not just the 4th quarter. Petitioner's husband produced his W-2, which shows that Petitioner earned \$18,000 for the entire year. (Exhibit 2, pg. 9)

First, a point of clarification should be made. The State Wage Record shows how much money an employer actually paid an employee during a given quarter. So, if Petitioner's husband was paid \$18,000 in a lump sum in December 2012, it would be reported as wages for the fourth quarter of 2012, even if it was intended to be compensation for the entirety of 2012.

Looking at the state wage record, Petitioner's husband's employer, [REDACTED], LLC, did not report wages for Petitioner's husband for the first three quarters of 2012. Given that the business wasn't incorporated until April 2012, it makes sense for there to be no entry for the first quarter of 2012. However, if Petitioner had been receiving regular paychecks from [REDACTED] between April and December 2012, one would think there would be entries in the State Wage Record for the second and third quarters of 2012. There are not. (I note that the State Wage Record contains entries for the first and second quarters of 2013.) Thus, it is reasonable to conclude that [REDACTED], LLC paid Petitioner the \$18,000 sometime during the fourth quarter of 2012.

If [REDACTED] paid petitioner's husband \$18,000 in a single, non-recurring lump sum payment, then the payment would be budgeted in the month it was received per *Wisconsin Child Care Assistance Manual* §1.6.8.

If the \$18,000 payment was one payment out of a number of regularly occurring, but fluctuating payments, the income should be averaged. *Wisconsin Child Care Assistance Manual* §1.6.7.

If the \$18,000 payment was contractual income, that is, income that is annual income intended to provide support for the entire year and not paid on an hourly or piece work basis, it should be prorated over the 12 months, per *Wisconsin Child Care Assistance Manual* §1.6.7.

Neither the agency nor Petitioner provided any documentation of how and when Petitioner's husband was paid the \$18,000, the agency will have to request verification of the information from Petitioner. Verification may be in the form of a paystub/paystubs, affidavit from the accountant, check registry/payment history from [REDACTED], etc. The agency will then have to re-determine the overpayment amount, if any, and issue a new notice to Petitioner. If Petitioner disagrees with the new overpayment determination, she will have to file a NEW request for fair hearing.

CONCLUSIONS OF LAW

The agency incorrectly determined that an overpayment in child care benefits occurred between October 1, 2012 and December 31, 2012.

THEREFORE, it is

ORDERED

That within ten days of this decision, the agency send Petitioner a notice requesting verification, within 10 days of the notice, of how and when her husband was paid the \$18,000 in 2012. Immediately upon receiving said verification, the agency shall re-determine the overpayment amount, if any, and send Petitioner a new notice of childcare overpayment.

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 11th day of November, 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 November 11, 2013.

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