



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/152309

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regards to an overpayment of Child Care benefits, a telephone hearing was held on October 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$880.20 in child care benefits due to agency error.

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was receiving child care benefits in at least January, 2013.

2. On January 11, 2013, the petitioner's employment with Metro Home Health ended, and it appears that she reported this loss of her job to the Department's agents on January 14, 2013; but the agency took no action on the report for reasons unknown.
3. In March, 2013, \$880.20 in child care benefits were paid by the Department for cares received by the petitioner's minor children, "A.H." and "V.B."
4. The petitioner was not working or participating in W-2 assigned activities in March, 2013, such that she required the child care benefits paid for her two minor children totaling \$880.20 in March, 2013.
5. On September 18, 2013, the Department issued a Child Care Overpayment Notice & Worksheet to the petitioner informing her that she was overpaid \$880.20 of child care in March, 2013, because she failed to report a change in the number of hours she worked or was in approved activities.
6. On September 24, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency determination that she had been overpaid.

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 12.23. 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 12.23(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 W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a). 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.

There is no argument that petitioner was not working (or in W-2 activities) during the period in question. Petitioner testified that although she was not working, she reported the job loss immediately, and the agency representative told her she could continue to use child care. Therefore, she asserts that she should not be punished for this agency error in allegedly misleading her into this overpayment. The problem is that there are no exceptions written into Wis. Admin. Code §DCF 12.23(1)(g). Both agency error and client error overpayments must be recovered. Child care is available ONLY for working or participating in W-2 activities. I have no choice to conclude that petitioner was overpaid \$880.20 in child care in March, 2013, because she was not using it for the statutorily mandated reasons.

CONCLUSIONS OF LAW

Petitioner was overpaid \$880.20 in child care funds because she was not working or attending W-2 activities while utilizing the child care in March, 2013.

NOW, 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 5th day of November, 2013

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 November 5, 2013.

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