



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/152317

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Children and Families, by the Milwaukee Early Care Administration (MECA) in regards to an overpayment of Child Care benefits, a telephone hearing was held on November 20, 2013, at Milwaukee, Wisconsin. A hearing set for October 30, 2013, was rescheduled at the respondent's request. At the request of the petitioner, the record was held open for 10 days for the submission of an additional document, which has been received.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$2,340.36 in WI Shares benefits because she did not need the child care utilized to participate in work or approved activities.

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: Joe McCleer, Attorney  
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 the period of January 20 – July 31, 2013.

2. The petitioner worked as a volunteer at the child care center that her children attended in the amounts of time shown in Exhibit #9 during the period of January 20 - July 31, 2013. This volunteer work was not work for which she was paid by a qualified employer or otherwise approved W-2 activities.
3. On July 26, 2013, the petitioner stated to the agency that she works caring for her father, [REDACTED], 8 hours a day, 7 days a week, for which she is paid by the IRIS Program, and works from 7 A.M. to 3 P.M. doing so. [REDACTED] lives in a home just down the street from the petitioner's child care provider, [REDACTED]; and his home is within eyesight of the [REDACTED] facility.
4. The agency reviewed the child care facilities Attendance Records (sign in/sign out) and compared the hours reported on these documents as the hours in which the petitioner's children were in care and the hours the petitioner was listed (in the same Attendance Records) as being an on-site volunteer at the [REDACTED] child care facility, to determine the hours in the tested period of January 20 – July 31, 2013, in which she was not working or participating in W-2 assigned activities such that she required the child care benefits paid for her two minor children. The agency determined that child care services totaling \$2,340.36 were overpaid during the period of January 20 – July 31, 2013; but also determined that \$6,124.97 in child care benefits were correctly paid in this period to the petitioner, out of a total paid for the care of her children of \$8,465.33.
5. On September 18, 2013, the Department issued a Child Care Overpayment Notice & Worksheet to the petitioner informing her that she was overpaid \$2,340.36 of child care in the period of January 20 – July 31, 2013, because she failed to report a change in the number of hours she worked or was in approved activities; failed to report changes in her hours worked; and otherwise did so intentionally. See, Exhibits R-1, R-9, and R-8.
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 providing care to her infirm father, who lives down the street from the child care center, during the period in question. Rather, the argument is over whether she

was on site at the child care as a volunteer for substantial periods of time during the test period as she herself indicated in the child care center's Daily Attendance Records, and claiming payment for child care for her children while doing so, rather than working for her father down the street.

Petitioner testified that although she wrote hours that she was volunteering down on the Attendance Records, she was not really there for those hours. Rather, this was something the provider had been told was required, to record who was there during operation hours, when they arrived and left, but day care provider ██████ testified, ██████ was not there for all those hours. She testified that ██████ would leave through the back door and go back down the block to take care of her father entering his house in the back too. Conversely, ██████ testified that ██████ was there as a volunteer so she could do odd jobs and run errands, and "work off" her co-pay owed to the provider. No accounting in writing was given showing this was so, nor did any witness appear but ██████ and ██████. In addition, when the Department presented a private investigator who staked out the day care center for the hours of operation for one working week of the tested period, who testified as to when ██████ arrived with her children, went inside and did not leave, ██████ and ██████ alleged that the investigator would not have seen ██████ leaving out the back, and somewhat conversely, that the investigator was wrong when she said there were no fences in the back yards between the day care center and Mr. ██████'s home, because in fact there were two fences.

Therefore, the petitioner asserts that Department is wrong, and the investigator is wrong, and that she was not volunteering all of the hours found by the agency when her children were on site. Rather, she was actually down the block taking care of her father.

Both agency error and client error overpayments must be recovered. Wis. Admin. Code §DCF 12.23(1)(g). Child care is available ONLY for working or participating in W-2 activities. I find the explanation offered by ██████ and ██████ that they knowingly completed incorrect Attendance Records that indicated that ██████ was on site as a volunteer because the Department personnel demanded that everyone in the facility be listed thereupon to be convenient, evasive, self-serving to both, internally inconsistent, inconsistent with the fact that ██████ was supposed to be caring for her father during these same hours a few houses away, uncorroborated by any documents or other witnesses, contradicted by the Attendance Records, and wholly not credible. Rather, it appears highly likely that she was getting paid for hours attending to her father while for significant periods of time she was down the street at the day care caring for her own children and other children to work off her copay. In essence, a very small-time petty double-dip of public funds appears to have been occurring, as she received IRIS funds to care for her father, while also receiving Child Care benefits for her children when she was doing non-qualified work for ██████ as a "volunteer".

The Department has established by far more than the preponderance of the evidence in this record that the petitioner was overpaid \$2,340.36 in child care in the period of January 20 – July 31, 2013, because she was not using it for the statutorily mandated reasons.

### CONCLUSIONS OF LAW

Petitioner was overpaid \$2,340.36 in child care funds because she was not working or attending W-2 activities while utilizing the child care in the amounts of time claimed for reimbursement in the period of January 20 – July 31, 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 25th day of November, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 25, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
[joseph.mccleer@wisconsin.gov](mailto:joseph.mccleer@wisconsin.gov)