



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/152475

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 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 November 05, 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 for the month of May 2013.

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: Keisha Love, Child Care Subsidy Specialist II
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 September 24, 2013, the agency sent Petitioner a Child Care Client Overpayment Notice, case number [redacted], BV referral Number [redacted], indicating he and his wife were overpaid

child care benefits in the amount of \$1171.86 for the period of May 5, 2013 to May 31, 2013. (Exhibit 1)

3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 30, 2013. (Exhibit 1)
4. Petitioner's assistance group size is 4. (Exhibit 1)
5. Petitioner received two pay checks in May 2013, one dated May 4, 2013 for \$998.40 and one dated May 25, 2013, for \$1497.60. His gross income for that month totaled \$2496.00. (Exhibit 3 and 4)
6. Petitioner's wife also received two pay checks in May 2013, one dated May 17, 2013 for \$912.50 and one dated May 31, 2013 for \$950.00. Her gross income for that month totaled \$1862.50. (Exhibit 3 and 4)

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 Shares 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 he and his wife used child care benefits in the amounts stated by DCF. However, Petitioner disagreed with the agency's determination that his wife and he were overpaid child care benefits.

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 gross monthly income. *Id. at* §1.6.4

This case concerns on-going benefits. As such, in order for Petitioner and his wife to be eligible for benefits during the times in question, their income needed to be at or below 200% FPL, which for an assistance group size of 4 is \$3925 for 2013. See <http://aspe.hhs.gov/13poverty.cfm>

It is the agency's contention that an overpayment occurred in May 2013, because Petitioner did not correctly report changes in his household income.

Petitioner was obligated to report any increases in household income that put it above the 200% FPL limit, within 10 days that the change occurred. *Wis. Admin. Code §DCF 201.04(2m); Wisconsin Shares Child Care Assistance Manual*, §§1.15.1 and 1.15.2.

Petitioner and his wife received checks as follows:

- On May 4, 2013 Petitioner received a check for \$998.40
- On May 17, 2013, Petitioner's wife received a check for \$912.50
- On May 25, 2013, Petitioner received a check for \$1497.60
- On May 31, 2013, Petitioner's wife received a check for \$950.00

The checks from May 4, 17 and 25 totaled \$3408.50:

\$ 998.40
+ \$ 912.50
+ \$1497.60
<hr style="width: 100%; border: 0.5px solid black;"/>
\$3408.50

As such, Petitioner's household income did not go over the 200% FPL limit of \$3925.00 until his wife received her May 31, 2013 pay check. If Petitioner had reported the change as required, he would not have needed to report the change until June 10, 2013. As such, there was no overpayment for May 2013.

CONCLUSIONS OF LAW

The agency incorrectly determined that Petitioner was overpaid child care benefits in May 2013.

THEREFORE, it is

ORDERED

That the agency rescind the September 24, 2013 Child Care Client Overpayment Notice, case number [REDACTED], BV referral Number [REDACTED] and cease all collection efforts. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

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 5th day of December, 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 December 5, 2013.

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