



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/143894

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on August 7, 2013, at Milwaukee, Wisconsin, pursuant to petitioner's granted Rehearing Request.

The issue for determination is whether petitioner was overissued Child Care benefits which are subject to recovery.

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: Jennifer Wakerhauser
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received Child Care benefits for petitioner's minor children under the auspices of the Wisconsin Works program during various months from 2008 through 2011.
3. Petitioner and [REDACTED] [REDACTED] have three children in common.

4. While receiving Child Care benefits, the respondent maintains that petitioner's income exceeded the Child Care program income limits.
5. At hearing, the respondent established the following overpayment claims:

██████████	12/07/08-02/28/09	\$ 1,080.00
██████████	07/05/09-06/30/10	\$ 8,928.82
██████████	07/04/10-02/28/11	\$15,122.30

DISCUSSION

This history of this matter commenced when ██████████ filed a petition for a Fair Hearing regarding overpayments of Child Care benefits for which the respondent determined that she was liable. Shortly thereafter, the petitioner filed a similar Fair Hearing request contesting his liability for the same Child Care overpayments. The alleged overpayments at that time were based upon claims that petitioner and ██████████ lived together, that petitioner's income exceeded program limits, and that ██████████ was not participating in approved activities while receiving Child Care benefits.

The Division of Hearings and Appeals assigned the two Fair Hearing requests to separate Administrative Law Judges, ignorant of the fact that the two Fair Hearing Requests addressed the same overpayment claims. The decision in Ms. ██████████'s appeal resulted in a remand of the matter to the respondent to rescind three of the overpayment claims, and pursue further verification regarding a fourth overpayment claim. See, Exhibit R-5. The decision in the petitioner's initial appeal resulted in a dismissal of his appeal and affirmation of the overpayment claims. The petitioner did not appear for Ms. ██████████'s hearing, nor was Ms. ██████████ called to testify at petitioner's initial hearing.

The petitioner timely sought a rehearing of his appeal, which request was granted by this Administrative Law Judge. Notably, during the pendency of this matter, the respondent addressed the remand in Ms. ██████████'s appeal, which resulted in a revision and correction of the overpayment claims for which the respondent claims that petitioner is liable. Specifically:

- Claim no. ██████████, covering the period of 12/04/11-05/31/12, in the amount of \$9,169.91, was deleted;
- Claim no. ██████████ covering the period of 10/05/08-02/28/09, in the amount of \$2,160.00, was revised and replaced by Claim no. ██████████ covering the period of 12/07/08-02/28/09, in the amount of \$1,080.00;
- Claim no. ██████████ covering the period of 07/05/09-06/30/10 was revised to reduce the amount of the overpayment from \$15,354.89 to \$8,928.82; and
- Claim no. ██████████, covering the period of 07/04/10-02/28/11, in the amount of \$15,122.30, was left unchanged.

See, Exhibits R-8 – R-12.

Notices reflecting the revised overpayment claims were sent to petitioner on February 25, 2013. Exhibits R-10 – R-12. The respondent testified that the revisions made to the petitioner's overpayment claims were undertaken to address solely those time periods where the petitioner was found eligible for Child Care benefits, but his income exceeded program limits. In testimony at hearing the respondent's representative explained that the petitioner's liability for overpayments related solely to Ms. ██████████'s eligibility for Child Care benefits was rescinded.

The respondent presented an organized and well-documented case establishing that petitioner's income, including bonuses and overtime, exceeded Child Care program income limits during the time periods

indicated by each of the overpayment claims. In successfully establishing its *prima facie* case of Child Care overpayments, the respondent provided petitioner's employer's verification of earnings, as well as petitioner's authorization history and the respondent's overpayment calculations. See, Exhibits R-13 – R-16.

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. The county, tribal governing body, Wisconsin works agency or department shall provide notice of the overpayment to the liable person. The department shall give that person an opportunity for a review following the procedure specified under s. 49.152, if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227. 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. The rules shall include notification procedures similar to those established for child support collections.

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 at Wis. Adm. 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. Adm. 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 he 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). Subject to certain exceptions and qualifications, none of which apply here, an otherwise qualified individual is financially eligible for the Child Care Benefit if

The gross income of the individual's family is at or below 185% of the poverty line for a family the size of the individual's family or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual's family is at or below 200% of the poverty line for a family the size of the individual's family.

Wis. Stats. §49.155(1m)(c)1. The county agency is required to count all earned income in determining whether or not an individual is eligible for the Child Care Benefit, and income includes money, wages or salary, income from self-employment, social security, dividends, interest on savings or bonds, income from estates or trusts, net rental income or royalties, public assistance, Supplemental Security Income (SSI), pensions and annuities, unemployment insurance, worker's compensation, alimony and other maintenance payments, and veteran pensions. *Day Care Manual* § 1.6.10. There is no exclusion for overtime, and similar irregular payments, such as bonuses, are included in income, *id.* The fact that the overtime or bonuses may fluctuate and may not be paid at all in a particular month does not exclude that income from consideration. Instead,

If the amount of regularly-received income varies, use an average. Average income that is received on an irregular basis over the period between payments. If neither the amount nor the frequency is consistent or predictable, count it only for the month in which it is received.

Day Care Manual § 1.6.7. There is no indication that petitioner’s overtime wages or bonuses were to be considered as anything other than earned income, and no exclusion is allowed simply because the overtime wages or bonuses were received on an irregular or fluctuating basis.

Petitioner did not dispute the income amounts indicated by his employer. He did, however, argue that he was informed by representatives of the respondent that overtime and bonuses did not have to be reported unless they were consistent, regular, and/or consecutive. The *Day Care Manual* recognizes three types of overpayments: those caused by inadvertent client error, those that occur as a result of an administrative error on the part of the agency, and those that are the result of an intentional program violation (IPV) where the recipient either reported or failed to report information that would have resulted in a decrease of benefits. *Day Care Manual* § 2.1.5. Since the county agency is required to recover *all* overpayments, regardless of fault, petitioner’s allegation that a county worker incorrectly advised him not to include the overtime and/or bonuses in his gross income reporting does not make a difference with respect to his obligation to repay any excess benefits that he received. Thus, petitioner’s overtime/bonus income was properly considered as gross income when testing petitioner’s eligibility for the Child Care Benefit.

The petitioner has not successfully rebutted the respondent’s established *prima facie* case of Child Care overpayments. As such, I must affirm overpayment claim nos. [REDACTED], [REDACTED], and [REDACTED].

CONCLUSIONS OF LAW

Respondent has established petitioner’s liability for the following overpayment claims;

- | | | | |
|----|------------|-------------------|------------------|
| 1. | [REDACTED] | 12/07/08-02/28/09 | \$ 1,080.00; |
| 2. | [REDACTED] | 07/05/09-06/30/10 | \$ 8,928.82; and |
| 3. | [REDACTED] | 07/04/10-02/28/11 | \$15,122.30. |

THEREFORE, it is

ORDERED

That petitioner’s appeal 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 30th day of January, 2014.

\sPeter McCombs
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 January 30, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Child Care Fraud
jennifer.wakerhauser@wisconsin.gov