



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/150545

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Children and Families, (DCF) in regard to Child Care, a telephonic hearing was held on August 13, 2013, at Milwaukee, Wisconsin. At the request of the Milwaukee County representative, Office of Legal Counsel Attorney Joseph McCleer submitted a September 3, 2013 closing argument on behalf of the Department to DHA and the petitioner. That closing argument is received into the hearing record. The petitioner did not submit to DHA any response to Attorney McCleer’s written submission.

The issue for determination is whether the Department is correctly seeking recovery of a child care overpayment to petitioner of \$12,302.76 during July 1, 2012 to November 30, 2012, due to agency error because petitioner was working for a “nonqualified employer.”

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: Tamika Terrell, childcare overpayment 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:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner was employed as a child care worker for [REDACTED], LLC during the period of July 1, 2012 through November 30, 2012.
3. The petitioner received the following child care payments: a) July, 2012 - \$3,214.60; b) August, 2012 - \$2,571.68; c) September, 2012 - \$2,512.00; d) October, 2012 - \$2,002.24; and e) November, 2012 - \$2,002.24
4. The Department sent a June 6, 2013 W-2 Child Care Overpayment Notice to the petitioner stating that she was overpaid W-2 Child Care ["CC"] in the total amount of \$12,302.76 during the period July 1, 2012 to November 30, 2012, because she was not participating in an approved activity with a "qualified employer."
5. Petitioner was employed at [REDACTED] during the time period of the overpayment, and used W-2 childcare during the time period of the overpayment.
6. [REDACTED] did not have a Worker's Compensation insurance policy for its employees, did not report employee wages, and did not have a Federal Employer Identification Number (FEIN) number during the overpayment period, and thus was a "non-qualified" employer.

DISCUSSION

The Department must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3); See also Wis. Admin. Code §§ DCF 101.23 & 201.04(5)(a); *Child Care Assistance Manual* 2.3.1. A person is eligible for W-2 childcare only if the person is participating in an approved activity. *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a); Wis. Admin. Code § DCF 101.26(1); Wis. Admin. Code § DCF 201.04(5)(a)2.b.; *Child Care Assistance Manual* 1.5.0.

As indicated below (1.5.3.1), working at a child care provider is an approved activity **only if the child care provider is a qualified employer**. In order for a child care provider to be a qualified employer the child care provider must have a Worker's Compensation insurance policy for its employees and must report employee wages as required. As noted in the above Findings of Fact, [REDACTED] did not have a Worker's Compensation insurance policy for its employees, did not report employee wages as required, and did not have a FEIN number. Therefore, it is not a qualified employer. It follows that petitioner was not in an approved activity during the time of the overpayment. For this reason, the overpayment must be affirmed.

1.5.3 Unsubsidized Employment

Work in an unsubsidized job, including training provided by an employer during the regular hours of employment. The Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting non-financial eligibility criteria and for receiving assistance as either:

- 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
- 2) Being legitimately self-employed.

All hours per week of unsubsidized employment, the schedule shift if second or third, and hours allocated for transportation must be documented in CARES Worker Web in case comments, on the employment page or in the Electronic Case File to substantiate the need for the child care assistance hours authorized. Indicate if the hours vary on a weekly basis. Documenting employment schedules is required for both types of unsubsidized employment: working for a qualified employer or legitimate self-employment. If a qualified employer has provided verification of

the individual's hours per week of employment there is no need for them to also provide verification of a work schedule unless the worker finds the employment questionable.

The program definitions for "qualified employers" and "legitimate self-employment" are described below and reflect current Wisconsin Wage and Unemployment Insurance law:

1.5.3.1 Qualified Employers

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete. If the FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.

Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews.)

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.

The employer must have a Worker's Compensation insurance policy for its employees.

The employer must comply with Wisconsin minimum wage law for all employees.

The employer must file a New Hire report on the employee within thirty days of the hiring date.

The employer must report wages to Unemployment Insurance unless exempt.

Child Care Assistance Manual 1.5.3.; *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a); Wis. Admin. Code § DCF 101.26(1); Wis. Admin. Code § DCF 201.04(5)(a)2.b.

Petitioner argues that the child care overpayment is not her fault because it was the child care provider, and not her, that failed to have a Worker's Compensation insurance policy for its employees and failed to report employee wages, and failed to establish a FEIN number. However, even if the overpayment is not petitioner's fault it must still be repaid. Wis. Admin. Code § DCF 101.23(3); See also Wis. Admin. Code § DCF 201.04(5)(a)1. Furthermore, petitioner did not establish that the child care overpayment should by law be recovered from [REDACTED] based upon the circumstances of this case. A CC overpayment is any CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g); Child Care Assistance Manual 2.3.1.

CONCLUSIONS OF LAW

The Department is correctly seeking recovery of a child care overpayment of \$12,302.76 during July 1, 2012 to November 30, 2012, due to agency error because petitioner was working for a "nonqualified employer" pursuant to the Child Care Assistance Manual § 1.5.3.1

THEREFORE, it is

ORDERED

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 1st day of November, 2013

\sGary M. Wolkstein
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 1, 2013.

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