



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/150746

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 scheduled for August 15, 2013. On August 7, 2013, the DCF submitted a Motion to Continue Fair Hearing due to a scheduling conflict for its attorney. The motion was granted and the hearing was rescheduled to September 26, 2013. On September 26, 2013, the Petitioner requested a continuance to allow her time to review DCF's exhibits and to obtain legal representation. The Petitioner's request was granted. The hearing was rescheduled to October 22, 2013. DCF presented its case-in-chief. The Petitioner requested that the matter be continued to allow her time to obtain additional information. The hearing continued and was concluded on October 24, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$3,065.16 for the period of December 16, 2012 – February 28, 2013.

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: Joseph McCleer

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On September 7, 2012, Petitioner applied for child care benefits for her three minor children. She reported self-employment as a child care provider. She also reported employment with [REDACTED], starting on August 27, 2012. She reported 40 hours/week at \$8.25/hour with [REDACTED]. Petitioner was approved for child care benefits.
3. Effective August 14, 2012, the Petitioner was no longer licensed as a child care provider.
4. On December 26, 2012, the Petitioner contacted the agency regarding health care benefits. She did not report at that time that her last day of work at [REDACTED] was December 14, 2012.
5. On December 27, 2012, the agency issued a Notice of Child Care Eligibility to the Petitioner informing her that she is eligible for child care benefits for December, 2013. It further informed the Petitioner of the requirement to report any changes in her situation that may change eligibility within 10 days of the date of the change. It specifically informed her that if she stops working, she must contact the agency as she may no longer be eligible for child care benefits.
6. On January 4, 2013, the Petitioner submitted a change report for a new address. She did not report at that time that her last day of work at [REDACTED] was December 14, 2012.
7. On or about January 7, 2013, the Petitioner participated in training classes online for [REDACTED]. She continued to participate in the training course until approximately March 14, 2013.
8. On February 25, 2013, the agency issued a Child Care Authorization Information notice to the Petitioner informing her that authorizations for child care for three children would end on March 2, 2013.
9. On February 28, 2013, the agency processed an online change report submitted by the Petitioner on February 16, 2013 in which she reported receiving unemployment compensation benefits. Petitioner's UC claim was started on January 24, 2013. She received her first UC payment of \$195/week on February 19, 2013. The agency verified that the Petitioner was laid off from her job at [REDACTED] on December 14, 2012. The case was updated with Petitioner's income. The Petitioner's child care case closed.
10. On March 1, 2013, the agency issued a Notice of Eligibility, Child Care to the Petitioner informing her that child care benefits would end effective March 31, 2013.
11. On March 4, 2013, the agency received an employer verification from Buy Seasons indicating two period of employment for the Petitioner, October 1 – 26, 2012 and December 10, 2012. The employer verified Petitioner worked 95.15 hours in October, 2012 and 6.45 hours on December 10, 2012.
12. On March 9, 2013, the agency received an employer verification from [REDACTED]. It indicates Petitioner's most recent start date was December 12, 2012 and that she was no longer employed as of January 9, 2013. The employer also submitted a pay period summary showing the last day of work was December 16, 2012 and her last paycheck was December 20, 2012.
13. Petitioner had no wages reported for the 1st quarter of 2013.
14. On May 16, 2013, Petitioner started receiving W-2 benefits.
15. On June 19 and 20, 2013, the agency issued Child Care (CC) Client Overpayment Notices to the Petitioner informing her of the agency's intent to recover an overissuance of child care benefits in the amount of \$3,065.16 for the period of December 16, 2012 – February 28, 2013.

16. On July 16, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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. Approved activities include unsubsidized employment, pre-job training if the training is no more than 2 weeks and the job seeker is guaranteed a job from a qualified employer upon successful completion of the training, or schooling if the individual is also employed 5 – 20 hours/week. Child Day Care Manual §§ 1.5.0 et seq.

The agency calculated an overissuance of child care benefits from December 16, 2012 – February 28, 2013 based on information from Petitioner's employer [REDACTED] that her last day of work was December 14, 2012. The agency presented employer verifications, state wage records and unemployment compensation records to support its position that the Petitioner was not employed during the overpayment period.

The Petitioner asserts that she was employed with [REDACTED] until January 9, 2013. She testified that the staffing service arranged assignments for her as they became available. She presented documentation of emails with the agency indicating that she was assigned to a job at Elmbrook Hospital on December 24, 27 and 28, 2012. However, the employer verification and wage statements do not support the Petitioner's argument that she actually worked or received any wages from those days. The Petitioner indicated that she would obtain documentation from [REDACTED] and submit it but no additional information was submitted. There is no evidence that Petitioner had any unsubsidized employment during the overpayment period. She submitted no wage statements or record of job assignments or employer verification that she was working. The state wage record shows no wages for the 1st quarter of 2013.

The Petitioner also asserted that her training with [REDACTED] beginning on January 7, 2013 was an approved activity. The training does not meet the definition of an approved activity as employment or as pre-job training. She did not get paid for the training. The training took place over a number of months. There was no job guarantee at the end of the training. The Petitioner testified that the training consisted of 6 hours/day of coursework and education. However, from the documentation supplied by the Petitioner, I can only verify that, during the overpayment period, the Petitioner did participate in some online tests

which were done late at night. There is no indication how long the Petitioner engaged in the training each day. The Petitioner did not obtain a job as a result of the training.

The evidence supports the agency's determination that there was an overissuance of benefits from December 16, 2012 – February 28, 2013 because the Petitioner was not engaged in an approved activity during that period. I reviewed the agency's evidence regarding the issuance of child care benefits and its calculation of the overpayment and find no error in its determination that Petitioner was overissued \$3,065.16 in child care benefits during that period.

CONCLUSIONS OF LAW

The agency properly concluded the Petitioner was overissued child care benefits in the amount of \$3,065.16 during the period of December 16, 2012 – February 28, 2013.

THEREFORE, it is ORDERED

That the petition be, and hereby is, 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 Milwaukee,
Wisconsin, this 17th day of January, 2014

\sDebra Bursinger
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 17, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Joseph.McClee@wisconsin.gov