



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151380

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Chippewa County Department of Human Services in regard to Child Care, a hearing was held on November 19, 2013, at Chippewa Falls, Wisconsin. Hearings scheduled for September 17, 2013, and October 22, 2013, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner must repay an alleged overpayment of Child Care.

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: Rhonda Kimmer

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner received \$2,819.78 in Child Care benefits from August 1, 2012, through January 31, 2013. The county agency seeks to recover those payments.

3. When the petitioner's husband has worked since August 1, 2012, he has worked for his father and is paid in cash at a rate of \$10 an hour. His father does not have an FEIN.

DISCUSSION

The county agency seeks to recover \$2,819.78 in Child Care benefits the petitioner received from August 1, 2012, through January 31, 2013, because it contends that her husband was not engaged in a qualifying activity. Child Care Benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The W-2 statute requires the department to recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

The state recognizes only two categories of unsubsidized employment that qualify for benefits. They are:

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

Day Care Manual, § 1.5.3.

Child Care policy goes on to state that “[a]ll 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.” *Day Care Manual*, § 1.5.3.1. In order to be considered legitimate self-employment, the person must meet at least seven of the following 10 conditions:

1. The individual holds or has applied for an identification number with the federal Internal Revenue Service.
2. The individual has filed business or self-employment tax returns with the federal Internal Revenue Service based on such services in the previous year or, in the case of a new business, in the year in which such services were first performed.
3. The individual maintains a separate business with his or her own office, equipment, materials, and other facilities.
4. The individual operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means and methods of performing such services.
5. The individual incurs the main expenses related to the services that he or she performs under contract.
6. The individual is responsible for the satisfactory completion of services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services.
7. The individual receives compensation for services performed under a contract on a commission or per-job basis and not on any other basis.
8. The individual may realize a profit or suffer a loss under contracts to perform such services.
9. The individual has recurring business liabilities or obligations.

10. The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

The father of the petitioner's husband does not have a documented FEIN and her husband has not shown that he has met any of the criteria for self-employment. The petitioner contends that she told her worker what her husband did and was assured that this would qualify for work under the child care program. I do not find it credible that the petitioner told her worker all of the details about her husband's employment. At an earlier hearing concerning whether she was eligible for benefits her husband testified that he had only worked once or twice all year. *DHA Decision No. CCB/148689*. The rules of the various programs are complicated, and workers occasionally make errors. But I find it is implausible that a worker would advise the petitioner that she could qualify for child care benefits if her husband worked this infrequently. More importantly, the rules require the agency to recover all overpayments regardless of who is at fault. The petitioner's husband clearly was not engaged in a qualifying activity. As a result, even if the petitioner thought he was engaged in a qualifying activity, she was ineligible for Child Care from August 1, 2012, through January 31, 2013, and must repay the \$2,819.78 in benefits she received during that period.

CONCLUSIONS OF LAW

The petitioner was ineligible for Child Care and must repay all benefits she received from August 1, 2012, through January 31, 2013, because her husband was not engaged in a qualifying activity.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 9th day of January, 2014

\sMichael D. O'Brien
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 9, 2014.

Chippewa County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud