



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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151837

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services Department [“County”] in regard to Child Care [“CC”], a Hearing was held via telephone on April 8, 2014. At petitioner’s request Hearings scheduled for March 4, 2014, February 4, 2014, January 7, 2014, and November 13, 2013 were rescheduled.

The issue for determination is whether the following Claim may be established against petitioner for an overpayment of Wisconsin Works [“W-2”] CC: Claim # [REDACTED] for the time period June 19, 2012 to April 28, 2013 in the total amount of \$5,074.20.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Sherry Officer, Fraud Investigator Aid
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

OTHER PERSON PRESENT:

[REDACTED], Brown County Sheriff’s Department
[REDACTED], petitioner’s son (5 months old)
[REDACTED], petitioner’s daughter (3 years old)
[REDACTED], petitioner’s ex-boyfriend
[REDACTED], petitioner’s mother

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. MECA established the following Claim against petitioner for an overpayment of W-2 CC: Claim # [REDACTED] for the time period June 19, 2012 to April 28, 2013 in the total amount of \$5,074.20.
3. Petitioner and adult male DH had at least 1 minor child (now 3 years old) in common during the time of the overpayment detailed in *Findings of Fact #2*, above; they also now have a 5 month old child in common.
4. During the time period of the overpayment detailed in *Findings of Fact #2*, above, petitioner, DH, and their child all lived together.
5. During the time period of the overpayment detailed in *Findings of Fact #2*, above, DH was not in an approved activity and could have provided care for the children he had with petitioner.

DISCUSSION

The County or agency 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) (2011-12); See also, Wis. Admin. Code §§ DCF 101.23 (February 2012) & 201.04(5)(a) (July 2013); *Wisconsin Shares Child Care Assistance Manual* ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (July 2013); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 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 W-2 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) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (July 2013); CC Manual 2.1.5.1. & 2.1.5.2.

In two-parent families both parents must meet all CC eligibility criteria. Wis. Admin. Code § DCF 101.26(1) (February 2012); CC Manual 1.4.8.2.; See also, Wis. Stat. § 49.155(1m)(d) (2011-12).¹ By policy a *Family or Family Group* includes any nonmarital coparent or any spouse who resides in the same household. CC Manual 1.2.0.

¹ The only exception to this two-parent family rule is if it is verified that one parent has a disability or health condition that makes that parent unable to participate in required activities and that parent is also unable to provide the child care necessary for the other parent to participate in required activities. Wis. Admin. Code § DCF 101.26(1) (February 2012); Manual 1.4.8.2. The parent's inability to participate in required activities and to provide child care must both be verified by a doctor, psychiatrist, or psychologist. Manual 1.4.8.2. Petitioner makes no claim that either she or DH has such a disability or health condition.

A person is eligible for W-2 CC only if the person is participating in an approved activity. CC Manual 1.4.8.; *Wisconsin Works Manual* (February 1, 2001) ["W-2 Manual"] 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2011-12); Wis. Admin. Code § DCF 101.26(1) (February 2012); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (July 2013); CC Manual 1.5.0.

CC can be approved only if CC is needed for the person to do any of the following activities:

"1.5.0 Approved Activities for Wisconsin Shares Child Care Assistance

1.5.1 Learnfare

Meeting Learnfare Program school attendance requirements.

1.5.2 High School

The parent is age 19 or younger, is not subject to Learnfare Program requirements, and is enrolled in high school or a course that is approved by the state superintendent of public instruction for granting a high school graduation equivalency subject to the following restrictions:

If the individual is under the age of 18 they must be living with their parent, or kinship care relative, or in a foster or treatment foster home meeting Wisconsin licensing standards, in a subsidized guardianship or interim caretaker home in Milwaukee County, or in an independent living arrangement supervised by an adult, or are married.

Supervised independent living situations must be documented in CARES case comments.

In independent living arrangements the adult does not have to be living in the home with the student if the student is at least 17 years old and the adult supervision is provided by a kinship care, or their former foster parent, subsidized guardian or interim caretaker, or a representative from a not-for-profit, child welfare, social service, or state corrections agency.

Online high school equivalency courses are contingent upon the child care authorizing agency's approval. Verification of the student's satisfactory progress is required and the worker shall enter appropriate case comments in CARES.

Participation under this section does not apply to the 24 month limit for educational approved activities. The 24 month restriction applies only for high school equivalency students age 20 and older.

1.5.3 Unsubsidized Employment

Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.

A work schedule for the participant is required for all authorizations written for unsubsidized employment as an approved activity if the reported work schedule is questionable.

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, or
- 2) Being legitimately self-employed.

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

Qualified employers must meet all of the conditions listed below. If an employer appears to be questionable, suggested verification steps are attached in the Appendix location of this document.

The employer must have a federal employer tax identification number (FEIN).

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.

1.5.3.2 Pre-Job Training

Pre-job training may be covered by the Wisconsin Shares program if all of the following conditions are met:

The training is limited to no more than two weeks in length,

The job seeker is guaranteed a job from a qualified employer upon successful completion of the training, and,

The agency determines that the training and job offer represents a legitimate employment opportunity and documents the finding in CARES case comments.

1.5.3.3 Apprenticeships

Apprenticeships are considered allowable forms of unsubsidized employment if all of the following conditions are met:

There is an apprenticeship contract signed by the applicant, employer, and Wisconsin Department of Workforce Development.

The Wisconsin Shares child care assistance is allowable for classroom and employment time covered by the contract provided all other eligibility criteria is met.

Apprenticeship participants are required under current law to receive at least the minimum wage while participating in classroom and on-the-job training.

Coursework taken prior to the period of time covered under the paid portion of the apprenticeship contract does not qualify as unsubsidized employment, but may qualify as meeting the approved activity criteria for participating in either basic education, English as a Second Language, GED/HSED, technical college, or other course of study, all of which required five hours per week of unsubsidized employment (See Basic Education and Course of Study at A Technical College as Approved Activities).

1.5.3.4 Sheltered Employment

Employment at a sheltered workshop licensed under s. 104.07(2), Wis. Stats, is considered unsubsidized employment and an allowable activity if the parent is the sole caretaker of a dependent child in need of child care to allow the parent to be employed.

1.5.3.5 Work Study

Work study is not considered qualified unsubsidized employment as a stand alone activity unless the individual has also been approved to participate in education as an approved activity (see Approved Activities #7).

1.5.3.6 Youth Employment

Youth employment is considered an approved activity for minor parents who live with a parent, foster parent, kinship care relative, subsidized guardian or interim caretaker, or person taking the place of a parent contingent upon all other nonfinancial and financial eligibility criteria being met.

1.5.3.7 Self Employment

If the validity of the self employment is in doubt, seven or more of the following conditions must be met by the applicant:

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.

1.5.4. Wisconsin Works or Tribal TANF Employment Position

Work in a Wisconsin Works employment position, including participating in job search, orientation and training activities under unsubsidized employment, and in education or training activities for trial jobs, community service jobs, or transitional placements. Tribal TANF participants must meet Wisconsin W-2 financial and non-financial eligibility requirements to be eligible for child care assistance.

1.5.5 FSET

Participate in the job search, training, or work experience component of the Food Stamp Employment and Training Program (FSET).

1.5.6. Basic Education

Participate in basic education, including English as a Second Language, literacy tutoring, or a course that is approved by the state superintendent of public instruction for granting a high school graduation equivalency if approved by the Wisconsin Works or its subcontracted eligibility determination agency and if the individual is also employed no less than five (5) hours per week in an unsubsidized job.

A school and work schedule is required for all participants.

The applicant/child care authorizing agency must determine that the basic education will provide an employment skill that facilitates the employed individual's efforts to maintain their current position or enhance employment in the same or another profession. The determination shall be entered into CARES case comments.

The individual is employed at least five (5) hours per week at the time school begins and continues to be employed at least five (5) hours per week throughout the semester.

The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment

Unsubsidized employment that is on an "on-call" basis or registration with a temporary employment agency is not qualified employment.

Wisconsin Shares child care assistance for participating in education under this section is limited to no more than 24 months per lifetime of the parent. The 24 months need not be consecutive.

The 24 months shall be recorded in the CSAW system by the agency or child care authorizing agency.

The 24 month rule does not apply to individuals in a W-2 or Tribal TANF employment position in.

Wisconsin Shares child care assistance is not available for study time.

Wisconsin Shares child care assistance is not available for online courses that are self-paced and do not require specific log on times for class sessions.

1.5.7 Technical College or Course of Study Producing Employment

Participate in a course of study at a technical college or participate in a course of study that would produce an employment skill as determined by the department if the Wisconsin Works or its subcontracted eligibility determination agency determines that the course or courses would facilitate the individual to maintain employment.

A school and work schedule is required for all participants.

The applicant/child care authorizing agency must determine that the education will provide an employment skill that facilitates the employed individual's efforts to maintain their current position or enhance employment in the same or another profession.

The determination shall be entered by the agency into CARES case comments.

Apprenticeships are an allowable approved activity for Wisconsin Shares child care assistance. The apprenticeship may be paid or unpaid. Apprenticeships are exempt from the five hour per week work requirement.

Except for persons in apprenticeships, the individual is employed at least five (5) hours per week at the time school begins and continues to be employed at least five (5) hours per week throughout the semester.

The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment, or

The employment is a work study position, or

The employment is directly related to the individual's school and their participation in the employment while in school produces a measurable cash value such as: fellowships, working for room and board as a Resident Assistant in a dormitory or private apartment, teaching assistant positions for tuition credits, or any other education-related employment that has a measurable cash value equivalent to five (5) hours per week at the state minimum wage through out the semester. Student teaching and unpaid internships do not meet the employment criteria of this section.

Unsubsidized employment that is on an "on-call" basis or registration with a temporary employment agency is not qualified employment.

Wisconsin Shares child care assistance for participating in education under this section is limited to no more than 24 months per lifetime of the parent. The 24 months need not be consecutive.

The 24 months shall be recorded in the CSAW system by the agency or child care authorizing agency.

The 24 month rule does not apply to individuals in a subsidized employment position in W-2 or in a Tribal TANF employment position.

Wisconsin Shares child care assistance is not available for study time.

Wisconsin Shares child care assistance is not available for online courses that are self-paced and do not require specific log on times for class sessions."

CC Manual 1.5.0.; See also, Wis. Stat § 49.155(1m)(a) (2011-12); Wis. Admin. Code § DCF 101.26(1) (February 2012); and, W-2 Manual 15.2.0.

During the time period of the overpayment in this matter DH was not employed, was not participating in an approved activity, and could have provided care for their children. Petitioner does not dispute this. Therefore, the overpayment detailed in *Findings of Fact #2*, above, must be sustained.

Petitioner requested a Hearing because she claims that DH did not live with her during the time period in question. The County claims that he did. The Decision in this matter must be based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). The preponderance of the credible evidence in the record of this matter is that DH lived with petitioner during the time period in question and, even if he did not "live" with petitioner, he could not have provided care for their children.

The County presented convincing evidence that DH was living in the same home as petitioner during the time period in question. An investigation conducted by the Brown County Sheriff's Office showed the following: DH reported to his Probation Officer ["PO"] that he was residing with petitioner and their children; DH's PO completed at least 3 home visits to petitioner's home to verify this; police were called to petitioner's home at 4:31 A.M. in the morning on July 10, 2012 and DH was present and provided that address as his address; police were called to petitioner's home at 3:18 A.M. in the morning on August 15, 2012 and DH was present and provided that address as his address.

Petitioner testified that DH used her address for probation but did not live there; that he was living with another woman (although she was still having sexual relations with him); that she let DH use her vehicle; that she allowed DH's PO to see DH at her home so DH would not get in trouble with his probation; that DH was at her house 2 or 3 days per week (Monday to Wednesday) but did not live there because she was having sexual relationship with both DH and another man, the other man would come to her home on the weekends, and she did not want DH and the other man to see each other. The other man (DJ) was present at the April 8th Hearing and testified that he was at petitioner's house 2 or 3 days per week and never saw DH. Finally, petitioner presented a *No Trespass Authorization* concerning the address where she lived and DH.

First, the testimony of petitioner's and DJ is not credible. Petitioner admits that DH was at her house 2 to 3 days per week, he was there during earlier morning hours on 2 occasions when police were called, and his PO verified he was there on 3 home visits. Further, even if DH did not "live" with petitioner, petitioner has presented no reason why DH could not have provided care for their children.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for overpayments of W-2 CC: Claim # [REDACTED] for the time period June 19, 2012 to April 28, 2013 in the total amount of \$5,074.20.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 15th day of April, 2014

\sSean P. Maloney
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 April 15, 2014.

Brown County Human Services
Public Assistance Collection Unit
Child Care Fraud