



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/152810

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on November 07, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency has established an overpayment of child care funds against the petitioner in the amount of \$133.76 for the month of May 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County. She received child care benefits (CCB) from January-May 2013.

2. From January-May 2013 petitioner's husband's income was not budgeted correctly by the agency when determining her authorization for child care.
3. By notice dated October 3, 2013 the agency informed petitioner that she was overpaid \$842.46 (claim # [REDACTED]) in child care because of agency/non-client error.
4. Petitioner's husband's income from self-employment in May 2013 was \$1008 (\$2142 gross - \$1134 expenses).

DISCUSSION

A parent is eligible for child care services if she 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); Child Care Policy Manual, (hereafter "the Manual"), §1.1.1, available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1); see also Manual §1.13.10.

The Manual provides as follows concerning self-employed applicants/recipients at §3.6.1.2:

During the first 6 months that a parent is engaged in a new self-employment business, the agency may authorize care for the hours the parent is engaged in self-employment work....

Authorizations for self-employment are only allowed to the extent that they support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage.

The Department has chosen to limit child care authorizations for self-employed parents to the hours obtained by dividing net self-employment income by the minimum wage. It allows full-time child care for up to six months after the person starts a new self-employment business, no doubt to allow the business time to grow to determine whether it can be capable of bringing in sufficient net income. The reason for the limitation is to avoid subsidizing a business that is not self-supporting. I add that in all two-parent households, the number of hours authorized for child care only cover the overlapping hours when both parents are participating in approved activities. See Manual, §§1.4.8.2 and 3.6.18.

The agency explained that it originally, and erroneously, calculated the authorized hours for the CCB as 12 hours. When it discovered the error, it recalculated the income to get the correct hours based on the husband's 2012 taxes showing his profit as \$1008. Then the agency divided that profit by 12 (months) for a total of \$84/month. That monthly figure was then divided by \$7.25 (minimum wage), and then divided by the factor of 4.3 to account for the weekly hours. This resulted in 3 hours/week as being accurately authorized. The agency therefore seeks the difference in the payment made for 12 hours versus the allowable 3 authorized hours

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits. Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. § 49.195(3). The County must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3);

Wis. Admin. Code §DCF 101.23(2); See also, Wisconsin Shares Child Care Assistance Manual, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/>.

In this case, the county established the overpayment at issue because of the over-authorization of hours and fully accepts the responsibility for the error. Additionally, the agency testified at hearing that it had amended the overpayment as it determined that May (\$133.76) was the only month where an overissuance occurred and had therefore deleted the originally noticed amount of \$842.46 in claim # [REDACTED]. In reviewing the evidence for May, I can find no error in the corrected income and calculation it had used for petitioner. Petitioner did not dispute the income calculations nor offer any arguments against the overpayment.

I must uphold the agency's determination. While petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). She may seek a repayment schedule with the agency.

CONCLUSIONS OF LAW

The agency has established an overpayment of child care funds against the petitioner in the amount of \$133.76 for the month of May 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 8th day of January, 2014

\sKelly Cochrane
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 8, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud