



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/152879

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 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 held on January 28, 2014, at Milwaukee, Wisconsin. Hearings scheduled in November and December, 2013, were rescheduled at petitioner's request or with petitioner's consent.

The issues for determination are (1) whether petitioner's appeal was timely and, if so (2) whether petitioner was overissued \$7,874.22 in child care benefits, which are subject to recovery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Patricia DeLessio
230 West Wells Street, Room 800
Milwaukee, WI 53203

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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner received Child Care assistance during the time period of May 14, 2012, through August 31, 2012. Exhibit R-6.

3. On July 18, 2011, petitioner supplied a hand-written authorization to respondent allowing [REDACTED] to speak with the respondent regarding petitioner's case, food stamps, and medical care. Exhibit R-11.
4. The respondent determined that, due to administrative error, petitioner received an overpayment of Child Care benefits during the time period of June 1, 2012, through August 31, 2012, in the amount of \$7,874.22. Exhibit R-2.
5. The respondent sent a June 7, 2013, Child Care (CC) Client Overpayment Notice (Claim no. [REDACTED]) and a Child Care Overpayment Worksheet to the petitioner's correct address of record informing her that she had been overpaid \$7,874.22 in child care assistance from June 1, 2012, through August 31, 2012, due to administrative error. Exhibit R-2, pp. 2,4.
6. The June 7, 2013, notice informed petitioner that she needed to file a request for a fair hearing within 45 days of that notice. *Id.* at p. 2.
7. On June 10, 2013, the respondent sent a Child Care (CC) Overpayment Notification (Claim no. [REDACTED]) to the petitioner's correct address of record. Exhibit R-2, pp. 5-6.
8. The June 10, 2013, notification informed petitioner that she needed to file a request for a fair hearing within 45 days of that notification. *Id.*
9. The respondent sent a July 2, 2013, Repayment Agreement for Wisconsin Works (W-2) or Child Care Overpayment to the petitioner at her correct address of record. The petitioner received that Repayment Agreement. Exhibit R-2, p. 9.
10. Dunning notices were sent to the petitioner at her correct address of record dated August 2, 2013, September 4, 2013, and October 2, 2013. Exhibit R-2, pp. 16, 18, and 20.
11. The petitioner sent a request for a fair hearing to DHA dated October 12, 2013, regarding the alleged Child Care overpayment, which was received at DHA via facsimile on October 19, 2013. Exhibit R-10.
12. There is no evidence that petitioner requested any hearing prior to October 19, 2013, regarding her Child Care overpayment.

### **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). 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). Recovery of child care overpayments is mandated in the Wisconsin Administrative Code at §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 hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative decision concerning Child Care must

be filed within 45 days of the negative decision. Wis. Stat. § 49.152(1), Wis. Admin. Code § HA 3.05(3), *Child Day Care Manual*, Chapter 2, § 2.5.0.

In this case, the negative action was the county agency's determination that petitioner was overissued Child Care benefits from June 1, 2012 to August 31, 2012, due to administrative error. Petitioner's appeal was filed on October 19, 2013, which is 101 days after the latest notice date of the action (July 10, 2013). Thus, it was untimely, and no jurisdiction exists for considering the merits of the appeal.

Petitioner was informed about the 45-day time limit in the June 7, 2013, and June 10, 2013, notice letters. See, Exhibit R-2, pp 1-8. The July 2, 2013, Repayment Agreement, which petitioner's husband conceded that he had received, referred petitioner to the original overpayment notification for fair hearing information. See, Exhibit R-2, p. 14.

At hearing, petitioner's husband testified that he did not recall seeing the initial overpayment notices. He noted that he did receive the Repayment Agreement, and thereafter contacted his sponsor, Ms. [REDACTED].<sup>1</sup> She advised him to go to follow up with the respondent's offices, which he did in the summer of 2013. The petitioner's husband stated that he could not recall the exact date of his meeting with the respondent, but noted that a translator, via the language line, assisted him with translation during the appointment. He asserted that he was never informed of the overpayment appeal time limit during the appointment. The record does not disclose whether the petitioner or her husband ever supplied any notifications, worksheets, the repayment agreement or the dunning notices to her sponsor, Ms. [REDACTED].

In support of its argument that the hearing notices were sufficient, the respondent noted that petitioner had received and responded to the required Six Month Report form (SMRF) obligation. Exhibit R-15. On June 4, 2013, the petitioner's initial SMRF was returned to the petitioner because it had not been signed; petitioner rectified the omission, and timely returned the signed SMRF on June 6, 2013. See, Exhibits R-12 – R-15. I find it notable that the SMRF request was made in English, the request for petitioner's signature was made in English, and the petitioner's correction was promptly provided.

This is a very close case, but I am unable to find that the petitioner has successfully rebutted the petitioner's *prima facie* case establishing that the petitioner's appeal is untimely. The petitioner has not provided any valid reason or good cause for not addressing the overpayment timely. Even assuming, *arguendo*, that the initial notices were lost in the mail, petitioner did receive the repayment agreement, and was aware then that an overpayment had been asserted. The petitioner appears to argue that, though they knew of the overpayment, a misunderstanding arose during her husband's summer of 2013, meeting with the respondent regarding the basis for the overpayment; this led him to believe that the issue would be resolved via the submission of certain medical information. Petitioner's husband testified that translation services were provided at his meeting with the respondent. The record does not disclose what efforts, if any, the petitioner took to address the overpayment during his meeting with the respondent; testimony indicates that the meeting focused more on continuing eligibility than on the overpayment. Based upon the record before me, I cannot conclude that the petitioner's husband's mistaken assumption constitutes good cause for the failure to file a timely appeal.

As a recipient of public benefits, the petitioner has a certain responsibility to ensure that she in complying with the Child Care program's requirements. The respondent issued appropriate notices to the petitioner; the overpayment notices were issued in English, as were all of the prior Child Care notices included in the record. The record before me demonstrates that, while the petitioner was able to ensure that a SMRF issue (communicated in English) in June was immediately corrected, the deadline concerning a simultaneous overpayment notice (also in English) was ignored. The respondent has consistently provided notices to the petitioner in English, and the petitioner has not raised any concerns with that previously. I

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<sup>1</sup> Ms. [REDACTED] participated in the preparation of petitioner's Request for Fair Hearing form, and signed, "Written for Said and [REDACTED] by [REDACTED], family sponsor/PO [REDACTED]" Exhibit R-10.

do not find that the failure to provide the overpayment notices in petitioner's native language constitute sufficient grounds to overcome petitioner's untimely appeal.

Accordingly, for all the above reasons, I conclude that because petitioner did not appeal her Child Care overpayment within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the Child Care overpayment.

### CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 28th day of April, 2014

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\s\sPeter McCombs  
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.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney Patricia DeLessio  
Attorney Joseph McCleer



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 28, 2014.

Racine County Department of Human Services  
Division of Health Care Access and Accountability