



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/153206

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 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 December 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits from Petitioner.

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: L. Horton

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. Petitioner was sent a child care overpayment notice dated October 23, 2013 that informed her that she had been overissued child care benefits in the amount of \$5421.84 for the period from October 28, 2012 through May 31, 2013.
3. Petitioner and her child lived with Petitioner's mother, a child care licensee, during the time period involved here.
4. The overissuance alleged here was the result of agency error. That error was the authorization of child care to be provided by the grandmother as the child lived in the home of the grandmother/provider during the time period involved here.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code, § DCF 101.23*. 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 or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. *Adm. Code*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the "preponderance of the evidence" in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that "it is more likely than not" that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

The relevant policy relied upon by the agency as the basis for this alleged overpayment involved here states:

3.6.27 Authorizing When the Provider is the Child's Parent or Other Legally Responsible Adult, or Provider Resides with the Child

State statute prohibits authorizations to a child care provider for the care of their own child or a child with whom they reside.

- For purposes of this requirement, a child is considered to reside in any home where they have placement.

- A child can have more than once residence.
- Any placement arrangement that puts a child with a parent or other person for any period of time makes that child a resident of the parent or other person's home.

...

Manual, §3.6.27; 6/8/12 revision effective through 12/913.

The facts here are not in dispute. Petitioner does not, however, think it fair that there is not some agency liability for the overpayment given that it was agency error. Nonetheless, the law requires that all overissuances be recovered, regardless of whose error, unless the overpayment is an agency error and discovered more than 12 months after the overpayment. *Manual, §2.1.5.2 (the same for prior revisions of the Manual)*. This overpayment time period is less than 12 months from the date of discovery. Further, the Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. 540, 545 (E.D. Wis.1977)*. The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform "equity" in the manner sought.

CONCLUSIONS OF LAW

That Petitioner was overissued child care benefits as a result of agency error and the agency is required to recover that overpayment.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 17th day of February, 2014

\sDavid D. Fleming
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 February 17, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud