



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care, a hearing was held on November 26, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits and, if so, has the amount been correctly determined.

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: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave

[REDACTED]-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent a child care overpayment notice dated September 18, 2013 that informed him that he had been overissued child care benefits in the amount of \$1355.46 for the period from October 14, 2012 through June 30, 2013.
3. Petitioner received the child care involved here for his nephew. Petitioner also lived with his girlfriend (SS) and on September 11, 2012 their child in common was born.

4. The overissuance alleged here is for time periods where neither Petitioner nor SS were approved child care activities.
5. During the time period involved here both Petitioner and SS were employed with that employment being in Milwaukee County.

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)*. 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 involves household composition and definition of parent or person acting in place of a parent. Those definitions are:

Kinship Care Relative. A relative who may or may not be receiving kinship care benefits and who is one of the following: a stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, first cousin, second cousin, nephew, niece, aunt, uncle, step-uncle, step-aunt, or any grand person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by having the same ancestor, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

Parent. A custodial or placement parent, or biological, adoptive, foster, or treatment foster parent, legal custodian, subsidized guardian or interim caretaker of a child under s.

48.62(5) Stats in Milwaukee County, Kinship Care Relative, or person acting in place of a parent.

Person Acting in Place of a Parent. A non-related adult who does not meet the definition of a kinship care relative in this section who is caring for a child on a 24 hour basis and who is taking the place of a parent when the parent is unavailable by means of physical absence from the home.

Manual, §1.2.0; 6/8/12 revision effective through 12/913.

All parents, including persons acting in place of a parent, must be participating in an approved activity in order to receive child care assistance. *Wisconsin Shares Child Care Assistance Manual, §1.4.8.* If one parent is home while the other parent is working that parent is expected to watch the child(ren) and child care assistance is not available, that is to say, the childcare is only available for a two-parent household where work schedules overlapped. *Wisconsin Shares Child Care Assistance Manual, §1.4.8.2.*

The overpayment involved here really has two components. First, there are time periods were SS was not working but child care was utilized for Petitioner's nephew. Second, there are time periods where both Petitioner and SS were working but the nephew was not picked up within an hour of the end of the earlier work schedule – here SS's.

That SS was expected by child care rules to look after Petitioner's nephew when not in an approved child care activity is clear. Though SS was not related to the nephew in any way the definitions of parent and person acting in place of a parent are broad enough to draw her into Petitioner's household after the birth of their child. Though Petitioner should ideally have reported this, given the fact that there is no relationship between SS and the nephew except as found in these child care rules it is somewhat understandable that it was not reported. Nonetheless, SS was required by these rules to look after the nephew when she was not working.

The pick-up time is less clear. Petitioner testified credibly that the couple only had one car. Both worked in Milwaukee County and when both worked SS had to pick up Petitioner after work and it was not feasible to drive back and forth to Racine so would wait and pick up Petitioner after work and then pick up the nephew from child care. The *Manual* contains the following relevant provision:

3.6.14 Hours Authorized

Child care administrative agency workers should determine the number of hours of child care needed during the week to cover both the approved activity and travel time based on the parents' work schedule, school schedule, or Wisconsin Works (W-2) or Food Share Employment and Training Program (FSET) Employability Plan (EP).

Given this provision I am concluding that child care travel time is broad enough to have permitted extra time for child care on those days during which both Petitioner and SS had to travel back from Milwaukee. The agency will, therefore, have to adjust the overpayment by reversing the amounts included in the overpayment which were for dates on which both Petitioner and SS were working in Milwaukee.

CONCLUSIONS OF LAW

1. That Petitioner was overissued child care benefits for dates on which a person acting in place of a parent was not in an approved child care activity.
2. That the amount of the overissuance has not been correctly determined as there is no overpayment on days where both Petitioner and SS were working in Milwaukee and needed additional time for travel.

THEREFORE, it is

ORDERED

That this appeal is remanded to the agency with instructions to reduce the amount of the overissuance by removing the amount of the overpayment attributable to days on which both Petitioner and SS were working in Milwaukee. This must be done within 10 days of the date of this Order.

In all other respects 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 12th day of March, 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 March 12, 2014.

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