



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

CCO/153455

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 17, 2013, at Milwaukee, Wisconsin.

On March 14, 2014, the Department of Children and Families submitted a rehearing request that was granted. This decision is amended to correct the error of law noted in the rehearing request. The amendments are in bold 12 point font.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that the Petitioner was overpaid child care benefits.

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. During the times in question, the Petitioner resided with his children and his wife/mother of his children. (Testimony of Petitioner)
3. The Petitioner worked for [REDACTED] Care. (Testimony of the Petitioner)
4. On April 26, 2013, the agency verified that [REDACTED] Care had a valid Worker's Compensation Insurance policy. (Exhibit 2, pg. 26A)
5. On May 13, 2013, the agency verified the Petitioner's employment with [REDACTED] Care, effective May 8, 2013. (Testimony of the Petitioner; Exhibit 2, pg. 27)
6. [REDACTED] is the Petitioner's grandmother. (Testimony of the Petitioner)
7. Petitioner's children attended daycare at [REDACTED] Care. (Exhibit 2, pg. 26A)
8. Petitioner was laid off from [REDACTED] Care on August 17, 2013. (Testimony of Petitioner)
9. On November 9, 2013, the agency sent the Petitioner a manual Child Care Client Overpayment Notice, claim number [REDACTED], asserting that he was overpaid child care benefits in the amount of \$1783.90 for the period of July 7, 2013 through August 31, 2013. (Exhibit 2, pg. 5)
10. On November 11, 2013, the agency sent the Petitioner an automated child care overpayment notification, asserting the same overpayment. (Exhibit 2, pgs. 9 & 10)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 14, 2013. (Exhibit 1)

DISCUSSION

An overpayment of childcare benefits occurs when the agency pays benefits in an amount greater than what the recipient was eligible to receive. *Wis. Admin. Code DCF 101.23(1)(g)* The applicable overpayment rule requires recovery of the overpayment, regardless of whether it was the fault of the client or the agency. *Wis. Admin. Code §DCF 201.04(5)(a)1.*

Liability for overpayments, "shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b).*

The authorizing statute for the Child Care Subsidy Program is found at *Wis. Stats. §49.155*. The eligibility criteria are found under *Wis. Stats. §49.155(1m)*:

A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

(a) The individual is a parent of a child who is under the age of 13 ...and *child care services for that child are needed in order for the individual to do any of the following:*

1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].

- 1m. Obtain a high school diploma ...
2. *Work in an unsubsidized job...*
3. Work in a Wisconsin Works employment position
- 3m. Participated in a job search or work experience component of the food stamp program.
4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Emphasis added

The activities described above are referred to as "approved activities". *Child Care Manual (CCM) §1.4.8*. In two parent families, both parents must be participating in an approved activity. *CCM§1.4.8.2*

WAS WORK AT ██████████ CHILDCARE AN APPROVED ACTIVITY?

In the case at hand, it is the agency's position that the Petitioner was overpaid childcare benefits in July and August 2013 because neither he nor the mother of his children reported that ██████████ Care had lost/cancelled its Worker's Compensation coverage and as such, the Petitioner was no longer participating in an approved activity as defined above.

"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 who has a Federal Identification Number (FEIN), or 2) Being legitimately self-employed." *CCM §1.5.3*

In order to meet the definition of a "qualified employer", an employer that is a child care provider must have a Worker's Compensation insurance policy for its employees unless it is legally exempt. *CCM §1.5.3.1*

It is undisputed that ██████████ Care stopped carrying Worker's Compensation insurance. Thus, the agency is correct that when ██████████ Care stopped carrying Worker's Compensation Insurance it stopped being a qualified employer and as such, the Petitioner's job there no longer met the definition of unsubsidized employment.

WHEN WAS PETITIONER OBLIGATED TO REPORT THIS CHANGE?

The Petitioner asserts that he was not aware of the loss of Worker's Compensation Coverage until August 13, 2013. The agency produced documents from the Wisconsin Compensation Rating Bureau website (Exhibit 2, pgs. 77-82) indicating that ██████████ Care had coverage at least through June 29, 2013.

Petitioner was obligated to report any changes that affected his eligibility for child care benefits, within 10 days. *Wis. Admin. Code §DCF 201.04(2m)*; *Wisconsin Shares Child Care Assistance Manual*, §§1.15.1 and 1.15.2. Per *Wisconsin Shares Child Care Assistance Manual*, §1.15.3, if Petitioner had reported the change by July 10, 2013. ***Wisconsin Shares Child Care Assistance Manual, §3.8.10, states that if the change is not timely reported, the child care authorization should end the Saturday following the change. In this case, the Saturday following the change would be***

July 6, 2013. Thus, the agency correctly commenced the overpayment period on July 7, 2013.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid Child Care Benefits **in the amount of \$1783.90 for the period of July 7, 2013 through August 31, 2013.**

THEREFORE, it is ORDERED

That the **petition 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 25th th day of March, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 25, 2014.

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