



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/153456

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 Benefits (CCB), a hearing was held on December 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an overpayment of child care funds against the petitioner because petitioner was over the income limit.

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: Tamika Terrell

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner received child care benefits while she was working from April 2012 through April 2013. Petitioner is considered a household of 3 for CCB purposes.

3. For June, July, September, and November 2012 and for March and April 2013, petitioner's earned income was not budgeted correctly when determining her eligibility for child care funds.
4. By notice dated November 12, 2013 the agency informed petitioner that she was overpaid \$8965.23 (claim # [REDACTED]) from June 3, 2012 through April 30, 2013 in child care due to client error in not reporting the earned income. This amount was reduced to \$7157.95 after the agency received information from the petitioner's employer which showed that she was not over the income limit for August and October 2012. See Exhibit J.

### DISCUSSION

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). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Child Care Policy Manual*, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

In this case, the county established the overpayment at issue because petitioner did not report an increase in her earned income that put her above 200% FPL. The maximum income for any family to remain eligible for Wisconsin Shares child care assistance is 200% FPL. Financial eligibility is no longer met when a family's income exceeds 200% FPL. See *Manual* at §1.6.3. Petitioner did not dispute the income calculations, but rather, testified that she thought the year-to-date earnings shown on her checkstubs would have told the agency about her income. She also testified that her increase in earnings was due to a bit of overtime, which was not a permanent change, and therefore she did not think she had to report it. The agency presented evidence to show that she was notified on how and when to report the changes, but that she failed to do so. However, even if her error was unintentional, the petitioner received more benefits than she was eligible to receive for the periods in question and the agency is required to recover it.

I must uphold the county's determination that it found an overpayment. 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).

### CONCLUSIONS OF LAW

1. The agency has established an overpayment (claim # [REDACTED]) of child care funds against the petitioner in the amount of \$7157.95 for the months of June, July, September, and November 2012 and for March and April 2013 because petitioner was over the income limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby 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 4th day of February, 2014

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\sKelly Cochrane  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2014.

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