



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/153690

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 22, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a hearing was held on January 15, 2014, at Milwaukee, Wisconsin. A hearing set for December 18, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner was overpaid CC benefits during the 11/4/12 through 3/31/2013 period, due to agency error.

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

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The petitioner and her husband were employed from at least November 2012, through March 31, 2013. Their two children were in daycare throughout this period, and the Department paid CC subsidies to the daycare provider for the children that totaled over \$7,000.
3. The petitioner timely reported her household income, including her husband's income. The Department correctly determined that the household would have to be responsible for a co-payment based on income. Unfortunately, the Department incorrectly determined the amount of the CC co-payments for November 2012 through March 2013, by failing to include the husband's income.
4. On October 30, 2013, the Department issued a *CC Overpayment Notice* (claim # [REDACTED]) and a worksheet to the petitioner. That *Notice* advised that she had been overpaid \$1,235.30 in CC for the months of November 2012 through March 2013, due to agency error.
5. The Department has now correctly calculated the difference between the co-payments charged to the petitioner in the overpayment period, and the co-payments that should have been charged. The difference is \$1,235.30, and that is the amount of the recoverable overpayment here.
6. The overpayment was *not* caused by any error by the petitioner.

## DISCUSSION

### I. JURISDICTION.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*, *Child Care Manual*, § 2.1.5.3.

### II. THE PETITIONER MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The petitioner asserts that she reported her income to the agency, and that the overpayment was not her fault. However, the applicable overpayment rule requires recovery of the overpayment, regardless of fault:

**DWD 12.23 Recovery of overpayments. (1) DEFINITIONS.** In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

...

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital 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, but his or her liability is limited to such period. ...

Wis. Admin. Code §12.23(1)(g), (3)(a). See in accord, *Child Care Manual*, §2.1.5.1 - .2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against

the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. THE PETITIONER WAS INELIGIBLE FOR A PORTION OF THE CC PAYMENTS FOR 11/4/2012 THROUGH 3/31/2013, DUE TO EXCESS INCOME.

The petitioner was overpaid CC for the above period, because she ended up getting more benefits than she was supposed to receive. A CC household with income above 70% of the Federal Poverty Level is subject to a co-payment responsibility. The co-payment amount is on a sliding scale, based on income. Because the household's income was higher than the amount entered to calculate the co-payments, the co-payments were too low, causing the state to overpay the CC benefit. *Manual*, § 3.7.0

The petitioner did not question the income figures used by the agency in re-calculating her co-payment liability for the overpayment determination. She also does not question the agency's arithmetic. Rather, she stressed that the overpayment was not her fault. She is correct regarding fault. Nonetheless, state code requires recovery of all overpayments going back for one year (the agency can go back further if the client was at fault). Thus, she was overpaid CC from November 2012 through March 2013, and the agency must attempt recovery of that overpayment.

### CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid \$1,235.30 for the November 4, 2012 through March 31, 2013, period, due to agency error.

**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 Madison,  
Wisconsin, this 16th day of January, 2014

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\sNancy J. Gagnon  
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 January 16, 2014.

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