



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/153894

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 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 January 07, 2014, at Milwaukee, 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:



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:

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 two child care overpayment notices, both November 25, 2013. One indicated that Petitioner had been overissued child care benefits in the amount of \$1172.32 during the period from June 3, 2012 through December 31, 2012 (claim # [redacted]) and the other that she had been

overissued child care benefits during the period from March 3, 2013 through September 30, 2013 in the amount of \$1892.49 (claim # [REDACTED]).

3. Petitioner received the child care involved here for one child.
4. The agency alleged this overpayment for failing to report that household income exceeded 200% of the Federal Poverty Level. Petitioner was employed at all times relevant here. She does not dispute earnings detailed in Exhibit #s 2D and 2E.
5. The agency determined that Petitioner's household size is 2 - herself and her approximately 8 year old daughter. The agency excluded a son whose birthdate is September 17, 1993. He graduated high school in June 2013.
6. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.
7. 200% of the FPL for a group of 2 as of February 2012 was \$2522.00; 185% was \$2333.00. *Operations Memo 12-06; effective 2/1/12*. As of February 1, 2013 200% of the FPL for a group of 2 was \$2585 and 185% was \$2391. *See Operations Memo 13-04, effective February 1, 2013*.

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.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes household composition. Petitioner argues that her household should be three as it should include a son whose birthdate is 9/17/1993; the agency did not include him in the household as he did not graduate high school by age 19. Those policy provisions are:



Dependent Child. A person who resides with a parent or person acting in place of a parent and who is under the age of 18 or, if the person is a full-time student at a high school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19.



Family or Family Group. Is the Assistance Group that is defined as an individual who is a custodial parent or placement parent and their dependent children and all dependent children with respect to whom the individual's dependent child is a custodial parent. Family or Family Group includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. Family or Family Group does not include any person who is receiving benefits from relief block grant funds under s. 49.027 (3) (b). A grandparent who has guardianship of both (their adult child and their adult child's child) may all be included in the same Assistance Group. *Manual, §1.2.0; 6/8/12 revision effective through 12/10/13; the next revision contains the same definitions in the same section.*

There is an income test for child care eligibility, both at application and for ongoing eligibility. While initial eligibility requires income below 185% of the Federal Poverty level, to maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual), §1.6.3.* As Petitioner's case was ongoing it is the 200% of the Federal Poverty Level (FPL) test that is to be applied. Again, 200% of the FPL for a group of 2 during the period from February 1, 2012 through January 31, 2013 here was \$2522.00. *See Operations Memo 12-06, effective February 1, 2012.* From February 1, 2013 through the remainder of time relevant here was \$2585. *See Operations Memo 13-04, effective February 1, 2013.*

I also note that there are reporting requirements and the policy concerning fluctuating income:

1.15.1 Reporting Requirements

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

1.15.2 Examples of Required Information to be Reported

Examples of some of the information that parents are required to report include:

A change in the scheduled approved activity hours

A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

Manual, §§1.15.1 and 1.15.2.



1.6.7 Fluctuating Income

If the amount of regularly received income varies, use an average.

Example:

Harold is a salesman and receives a commission check every quarter. His last commission payment was \$150. Divide \$150 by three (3) months and it averages \$50 per month income.

Income that is normally obtained but received on an irregular basis is to be averaged over the period between payments.

Example:

Harold is a salesman who doesn't always receive a commission check every quarter. He did not receive a commission last quarter. His last check was \$200 and was received six (6) months ago. Divide the \$200 by six (6) months and count \$33.33 per month as his income until he reports receiving another commission check.

If neither the amount nor the frequency is consistent or predictable, count it only for the month in which it is received.

Example:

Harold is a salesman and he receives a sales commission check whenever his company determines that their profits will allow them to pay out commissions. Harold has not received a commission check for 9 months although before that he was getting them on a quarterly basis. Harold reports that he received a \$175 check this month, but doesn't know when he will receive one again. Count \$175 for this month's income.

Manual, §1.6.7.

These provisions are the same in both Manuals spanning the time involved here.

Petitioner's income exceeded 200% of the FPL for June 2012. This is not a case where Petitioner would have known how much she was going to earn prior to actually earning it. She had 10 days to report that but did not do so. She would have known this by the June 15, 2012 paycheck. (See Exhibit 2E at page 4) and should have reported it to the Department. Per the *Manual*, if a change is not reported timely the overpayment begins the first full week after the change:

Overpayment periods for changes related to eligibility:

If the change was reported timely, it should be applied five business days following the date it was reported. If the date it was reported plus the five business days is prior to adverse action, the overpayment period begins the first of the following month as eligibility should have ended at the end of the current month.

If the change is not reported timely, the change should be considered effective the date of the change. The overpayment period would begin the first full week following the change.

Manual, Chapter 2A, § 2.1.5.1 at page 17.

Here Petitioner's June 15, 2012 paycheck put her over 200% of the FPL. She did not report that; thus the period of the overissuance starts the first full week after June 15, 2012. This is when the agency began the overpayment for the first time period involved here (claim # [REDACTED]). See Exhibit 2F at page 8.

For the second time period, however, Petitioner's pay did not exceed the 200% mark until the March 28, 2013 paycheck. Not reported, the overpayment should begin the first full week after the change which would have been for child care beginning March 31, 2013. The agency, however, began the overpayment with the week of March 3, 2013. Exhibit # 2F at page 10. It will have to adjust the amount of the overpayment to exclude that portion of the overpayment attributable to the period from March 3, 2013 through March 30, 2013.

Finally, Petitioner contends that none of this is fair. The Division of Hearings and Appeals does not, however, 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.

CONCLUSIONS OF LAW

That the evidence demonstrates that Petitioner's household income was in excess of 200% of the FPL as alleged by the agency and, as it was not reported by Petitioner, the overpayment begins the first full week following June 15, 2012 for claim # [REDACTED] and March 28, 2013 for claim # [REDACTED].

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to amend the start date and the amount of the claim # [REDACTED] to reflect a start date for the overpayment of the first full week after March 28, 2013. This must be done within 10 days of the date of this order.

In all other respects, this case 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 28th 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 28, 2014.

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