



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/154027

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 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 8, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid \$548.16 in CC benefits in April 2013. Specifically, the question is whether the petitioner should be liable for all CC paid for a child whom she timely reported as being out of her household.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tamika [REDACTED], 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
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner was employed throughout February through April 2013. During that period, her child (█) was in daycare as well as a niece, █ (█). During the April 7 - 30, 2013, period, the Department paid CC subsidies of \$548.16 (3 weeks x \$182.72 weekly) to the daycare provider for the niece.
3. The petitioner timely reported her income and her correct household composition to the Department. Specifically, she reported to the Kinship program at the end of March that █ was leaving her household to return to that of the child's mother. The Kinship Care program did not issue a Kinship Care check to the petitioner for April 2013. Further, she telephoned the Department on April 2, 2013, and advised that her niece was no longer a member of her household. The Department should have then canceled the CC authorization to the provider for the niece, issued under the petitioner's name as the "parent." However, the agency erroneously left the CC authorization under the petitioner's name in place for the balance of the month.
4. On March 4, 2013, the Department issued a *Notice of Eligibility-Child Care* to the petitioner, advising that █ and █ were eligible for CC in her household. The next eligibility notice issued was on April 3, 2013, when the *Notice of Eligibility-Child Care* declares that only █ is eligible for CC as a member of the petitioner's household, effective May 1, 2013.
5. On October 28, 2013, the Department issued a *CC Overpayment Notice* (claim # █) and a worksheet to the petitioner. That *Notice* advised that she had been overpaid \$548.16 in CC for the April 7 – 30, 2013, period.
6. █'s mother (█) applied to the Department to open a CC case for herself for her children during the first week in April 2013. The Department opened a case for the mother for one of her two children; the opened case did not include █.
7. In calculating this overpayment, the agency counted all CC paid out for █ in April 2013. The agency did not determine whether █ should have been eligible for some amount of CC subsidy for █ in April 2013.

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.

II. GENERAL RULE: THE PETITIONER MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT █

The petitioner notes that she timely reported the departure of her niece to the agency, and argues that the overpayment was not her fault. She is correct, and the agency agrees that she was not at fault. However, the applicable overpayment rule requires recovery of the overpayment, regardless of fault:

DCF 101.23 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 § DCF 101.23. See in accord, *Child Day Care Manual*, §2.1.5.1. Thus, the general rule is that 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>.

In computing the amount of the overpayment, the agency treated all of the CC subsidy amount issued for ██████ in April 2013 as the overpayment amount to be recovered. (Testimony of ██████). No offset was performed by subtracting the amount of CC subsidy that should have been available to the mother, Ms. ██████, for ██████ in April 2013.

III. THE CC PAID WAS OF NO BENEFIT TO THE PETITIONER.

Incorrect CC payments were made on the petitioner's behalf for April 2013, because no CC subsidy for ██████ should have been made under the petitioner's case. That was so because ██████ did not live with the petitioner in that month. *Child Day Care Manual*, § 1.3.8 – 1.3.9.

Overpayment recovery requirements against parents receive further code elaboration as follows:

(5) OVERPAYMENT RECOVERY AND PENALTIES.

(a) Parent overpayments.

1. A child care administrative agency or the department shall take all reasonable steps necessary to *recover from a parent* funds paid to a child care provider or to that parent *when the parent was not eligible for that level of child care benefit **and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under child care assistance program requirements***, regardless of whether the overpayment was the result of administrative error, client error, or intentional program violation. Section [DCF 101.23](#) shall apply to overpayment collection from a parent under this section.

2. An overpayment shall include excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the following:

a. The parent failed to report a change in circumstances that may affect his or her eligibility within 10 days after the change.

b. The parent was absent from an approved activity under s. [49.155 \(1m\) \(a\)](#), Stats., without good cause, while the child was in the care of the provider.

3. The child care worker shall determine good cause under subd. [2. b.](#) if the approved activity is unsubsidized employment. ...

[emphasis added]

Wis. Admin. Code § DCF 201.04(5)(a).

For parental overpayment recovery, the code requires not only lack of eligibility, but that the overpayment benefits the petitioner by causing her to pay less for *her* required child care expenses. The

petitioner was not required to pay any child care costs to the day care provider for [REDACTED] in April 2013 because (1) [REDACTED] was not her child, (2) [REDACTED] was not residing with the petitioner, and (3) the petitioner did not drop off and pick up [REDACTED] from the day care. It was the liability of [REDACTED]'s mother, Ms. [REDACTED], to cover child care expenses for [REDACTED] in April 2013. Thus, I will conclude that the petitioner has no CC overpayment liability for April 2013.

CONCLUSIONS OF LAW

1. The Department incorrectly determined that the petitioner was overpaid and liable for CC benefits for the child [REDACTED] for April 2013.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to cease recovery efforts on claim # [REDACTED] against the petitioner within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of April, 2014

\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 April 16, 2014.

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