



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

CCO/154133

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 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 February 5, 2014, at Milwaukee, Wisconsin. A decision was issued on February 6, 2014. The Department/MECA filed a timely rehearing request, which was granted. Convening of a new hearing was not necessary. The changes from the February 6 decision are in italics below.

The issue for determination is whether the petitioner was (1) overpaid \$5,610.77 in CC benefits from November 6, 2011 through May 31, 2012, and (2) *overpaid \$7654.68 in CC from August 5, 2012 through April 30, 2013.*

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 [REDACTED] Avenue
Madison, Wisconsin 53703

By: Atty. Joseph McCleer
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 has five children, some of whom were in daycare from November 2011 through April 2013. The CC subsidy paid for the petitioner's children during the November 2011- May 2012 timeframe was \$5,610.77. The CC subsidy paid for the petitioner's children during the August 5, 2012 – April 30, 2013 timeframe exceeded \$7,654.68. Throughout these periods, the petitioner reported that she was the only parent residing in her household at [REDACTED], Milwaukee, Wisconsin.
3. On November 8 & 18, 2013, the Department issued a *CC Client Overpayment Notices* to the petitioner. The Notices advised that the petitioner was overpaid \$5,610.77 in CC from November 2011 through May 2012 (*claim # [REDACTED]*), and \$7,654.68 from August 5, 2012 through April 30, 2013 (*claim# [REDACTED]*). The basis for overpayments was the petitioner's failure to advise the Department that the parent of all of her children, [REDACTED] [REDACTED], was residing in her household throughout the *two periods*. See, Exhibit R-2.
4. [REDACTED] [REDACTED] resided with the petitioner and their children at [REDACTED] [REDACTED] Milwaukee, Wisconsin, from at least November 1, 2011 through April 30, 2013.
5. [REDACTED] was not employed from October 23, 2011 through May 2012, and again from August 5, 2012 through April 30, 2013 (*with interruptions*). His employment at [REDACTED] [REDACTED] ended in mid-October 2011. He next worked briefly for [REDACTED] in April 2012, earning \$72. State wage match reporting from all employers shows no other earned income for [REDACTED] in the April through September 2012 (2nd & 3rd quarter) period. See, Exhibit R-5. [REDACTED] did not work in October and December (briefly in November) 2012, and again not in March and April 2013. He did work in January and February 2013 at [REDACTED], so the CC amounts paid for January (\$942) and February (\$876) 2013, were not included in the overpayment calculation. See, Exhibit R-2, p. 13.
6. The petitioner did not argue that [REDACTED] is disabled or physically unable to care for the children.

DISCUSSION

I. JURISDICTIONAL AUTHORITY FOR CHILDCARE OVERPAYMENT HEARINGS.

All childcare 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 November 24, 2003, any parent desiring to contest childcare 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.*; *CC Manual, § 2.1.5.3*.

II. THE PETITIONER WAS OVERPAID CHILDCARE BENEFITS.

The agency asserted that the petitioner was overpaid childcare benefits because it believed that the father of the petitioner's children was living with her during the months listed in the overpayment periods. The pertinent policy instruction on household composition is as follows:

1.3.9 Assistance Group (AG) Compositions:

1. *An individual who is a custodial or placement parent, or kinship care relative, who is at least 18 years old; or a foster parent; or a subsidized guardianship provider (or interim caretaker); and , within the same household, and*

- All of their dependent children,

- All dependent children of their children...
 - *Any non-marital co-parent of their dependent child(ren), and any dependent children of the non-marital co-parent; ...*
- ... [emphasis added]

1.4.8.2 Two-Parent Families and Three Generation Families and Participation in Approved Activities

In two-parent families both parents in the AG, including step parents and non-marital co-parents, must be participating in approved activities, unless one parent is participating in approved activities and the other parent is: 1) unable to participate in an approved activity due to a disability or health condition, and 2) is unable to care for the child (ren) so that the other parent could participate, due to a disability or health condition. The parent's inability to *both* care for their children and participate in approved activities must be verified by a doctor, psychiatrist, or psychologist.

Eligibility for child care is only for the overlapping hours when both parents are in approved activities.

CC Manual, §§1.3.9 and 1.4.8.2.

Because the petitioner was living with ██████████ during the questioned periods, he was properly included the childcare assistance group for the overpayment determinations. If he was employed throughout the period, CC would still be necessary (assuming they stayed under the income limit) because both parents would have been at work. However, where, as here, he was not working, he was available to care for his children, and none of the CC benefit was necessary. That makes the CC paid out an overpayment.

The petitioner does not deny that she took her children to daycare while she worked, does not dispute the amount of the CC benefit that was paid out, and does not dispute the Department's arithmetic. There is also no dispute that ██████████ is the father of her children, including a child born in June 2012. The only point of disagreement is whether ██████████ was living in her household during the periods.

The Department proved that ██████████ lists the petitioner's undisputed address in DMV records for his driver's license and vehicle registrations. His mail was received at her residence during *these periods*. He used "her" address as his own on his employment records. He stored his vehicles behind her residence. Most significantly, the petitioner was unable to supply an alternate, verifiable address for ██████████ during the periods. No lease proving an alternate address for him was proffered. The petitioner identified his whereabouts as being sometimes with his grandmother (address unknown) and various other unspecified locations. This was not persuasive. Accordingly, I found that, relying on the preponderance of the credible evidence, that he lived with her during the *overpayment periods*, and I conclude that the alleged overpayments occurred.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$5,610.77 in CC benefits from November 6, 2011 through May 31, 2012.
2. *The petitioner was overpaid \$7,654.68 in CC benefits from August 5, 2012 through April 30, 2013.*

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 24th day of March, 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 March 24, 2014.

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