



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/154221

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 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) benefits, a hearing was held on March 24, 2014, at Milwaukee, Wisconsin. Hearings set for January 15 and February 5, 2014, were rescheduled.

The issue for determination is whether the petitioner was overpaid a total of \$20,587.47 in CC benefits for the January 3, 2010 through September 30, 2013 (non-continuous) period.

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: 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
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner and his wife, [REDACTED] [REDACTED] [REDACTED], received CC benefits for their child-in-common from at least January 3, 2010, through September 30, 2013. The total CC benefit paid to the provider on the petitioner's behalf exceeded \$20,587.47.
3. On June 23, 2011, the Department issued written *Child Care Overpayment Notices* (Notices) and worksheets to the petitioner. The Notices advised that the petitioner had been overpaid \$20,587.47 in CC for the January 3, 2010 through September 30, 2013, period. The Notice indicates that CC payments were made in error because the petitioner was living with his spouse, and either their combined incomes were too high to be eligible, or the petitioner was not employed or participating in a W2 activity (2010 only).
4. The petitioner lived with his wife and their child at [REDACTED], [REDACTED], Wisconsin from at least January 3, 2010 through September 30, 2013. This is a single family residence owned by the petitioner. His wife moved out on approximately October 1, 2013.
5. Although the petitioner's spouse was employed from January through June, 2010 (claim # [REDACTED]), the petitioner was not employed during that period. He was therefore available to care for his child during those months. The petitioner did not allege that his child has "special health conditions."
6. The petitioner and his spouse were both employed during the following periods: September 2010 through July 2011 (claim # [REDACTED]), September 4, 2011 through June 30, 2012 (claim # [REDACTED]), September 2, 2012 through June 30, 2013 (claim # [REDACTED]), and September 1 - 30, 2013 (claim # [REDACTED]). His spouse is a [REDACTED] Public Schools employee who typically did not work in July and early August. The household was overpaid CC during these claim periods because the household income exceeded the eligibility limit for the CC program.
7. The petitioner's spouse did not report the presence of the petitioner in her household, and therefore also did not report his income, during the above claim periods when she filed her CC application and subsequent renewal reports.

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. *Child Day Care Manual*, §2.1.5. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

An overpayment to a parent occurs when payments are made for a level of CC benefit for which the parent was not eligible. Wis. Admin. Code §DCF 201.04(5)(a). The applicable overpayment rule requires recovery of the overpayment, regardless of fault. *Id.* See in accord, *Child Day Care Manual (Manual)*, §2.1.5, available at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner.

III. AN OVERPAYMENT OCCURRED, DUE TO THE PETITIONER'S PRESENCE IN HIS WIFE'S HOUSEHOLD.

In this case, the petitioner does not contest several things. He does not quarrel with the agency's arithmetic in the overpayment calculation, or its verification of his wages. He also acknowledges that he has a child with his wife, and that their child went to daycare during the overpayment periods. The petitioner further acknowledges that his wife and child resided in the house he owns at [REDACTED], during the overpayment periods. He did not identify any employment for the January through June 2010, overpayment period.

When two adults and their minor child-in-common reside together, regulations require that they be treated as one CC household. *Manual*, §1.2.0, "Family" definition. The agency contends that the petitioner, his wife, and their child resided together throughout the overpayment periods identified above; the petitioner contends that he did not live with them during these months.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the eligibility criteria, then CC cannot be granted. The agency asserts that the unemployed father's presence in the home made CC benefits unnecessary. Free child care could have been provided by the unemployed parent. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

(1m) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

(a) The individual is a parent of a child who is under the age of 13 ...and *child care services for that child are needed in order for the individual to do any of the following:*

1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
 - 1m. Obtain a high school diploma ...
 2. *Work in an unsubsidized job ...*
 3. Work in a Wisconsin works employment position ...
 - 3m. Participate in a job search or work experience component of the food stamp ... program.
 4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
 5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

[emphasis added]

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8.

The heart of the dispute here is whether the petitioner resided with [REDACTED] during the overpayment periods. The agency proffered documentation of a *prima facie* case that he was residing with her. *E.g.*, he listed his wife's address in employment, DOT and voting records. He owned the house in which his wife and child resided ([REDACTED]). A private investigator surveilled the residence in February 2013, and observed the petitioner coming and going therefrom (*e.g.*, February 21, 2013, the petitioner's car is parked at the [REDACTED] address when surveillance begins at 5:39 a.m., and the petitioner is observed leaving the house and driving off in his car at 8:47 a.m.).

The petitioner testified that he did not live in the house that he owns, during the overpayment periods. Rather, he testified that he lived at multiple alternative addresses, for a few months at a time in each location, during the 2010 through September 2013 period. When pressed as to the full names (first and last names) of any of his "landlords," he could name only one (M. [REDACTED]). He was also unable to provide any of the street addresses at which he claims to have resided. This was not credible testimony.

Based on the foregoing, I found that the petitioner lived with his wife during all of the overpayment periods, and that his presence was properly added to the household for the overpayment claims. The petitioner did *not* argue that, if his income was combined with his wife's income during the second through fifth claim periods, their joint income was below the eligibility limit.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid **\$3,036** in CC from January 3, 2010, through June 30, 2010, due to client error (claim # [REDACTED]).
2. The Department correctly determined that the petitioner was overpaid **\$5,431.52** in CC from September 5, 2010, through July 31, 2011, due to excess income and client error (claim # [REDACTED]).
3. The Department correctly determined that the petitioner was overpaid **\$6,044.67** in CC from September 4, 2011, through June 30, 2012, due to excess income and client error (claim # [REDACTED]).
4. The Department correctly determined that the petitioner was overpaid **\$5,937.28** in CC from September 2, 2012, through June 30, 2013, due to excess income and client error (claim # [REDACTED]).
5. The Department correctly determined that the petitioner was overpaid **\$138.00** in CC from September 1-30, 2013, due to excess income and client error (claim # [REDACTED]).

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 25th 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 25, 2014.

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