



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/154222

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Oneida County Department of Social Services ["County"] in regard to Child Care ["CC"], a Hearing was held via telephone on February 25, 2014.

The issue for determination is whether following Claim may be established against petitioner for overpayments of Wisconsin Works ["W-2"] CC: Claim # [REDACTED]; April 28, 2013 to August 3, 2013; \$138.67.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Amy Mayo, Support Programs Supervisor

Karen Smith, ESS
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County, Wisconsin.
2. The County established the following Claim against petitioner for overpayments of CC: Claim # [REDACTED]; April 28, 2013 to August 3, 2013; \$138.67.
3. The overpayments detailed in *Findings of Fact* #2, above, were caused because petitioner had her child in childcare at times when she was not in an approved activity (such as work).

DISCUSSION

The County or agency must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2011-12); See also, Wis. Admin. Code §§ DCF 101.23 (February 2012) & 201.04(5)(a) (July 2013); *Wisconsin Shares Child Care Assistance Manual* (5/3/12) ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (February 2012); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (July 2013); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (February 2012); Wis. Admin. Code § DCF 201.04(5)(a)1. (July 2013); CC Manual 2.1.5.1. & 2.1.5.2.

A person is eligible for W-2 CC only if the person is participating in an approved activity. CC Manual 1.4.8.; *Wisconsin Works Manual* (February 1, 2001) ["W-2 Manual"] 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2011-12); Wis. Admin. Code § DCF 101.26(1) (February 2012); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (July 2013); CC Manual 1.5.0.

In this case employment records and child care records show that petitioner had her child in childcare at times when she was not in an approved activity (such as work). Petitioner does not dispute this. However, petitioner argues that the employment records do not show her correct hours of employment. She argues that her employer would not allow her to record more than 10 hours of work in a day and for this reason she had to shift her recorded hours of work from days when she worked more hours to days when she worked less. She also argues that she needed to do the same thing to get reimbursed for her travel. However, petitioner offers no independent documentation (or any other evidence aside from her own testimony and handwritten notes) to support her argument. This is true even though petitioner was offered the opportunity (which she declined) to reschedule the hearing to allow time for her to do so. In the absence of any other evidence it must be presumed that her employment records are correct.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for overpayments of CC: Claim # [REDACTED]; April 28, 2013 to August 3, 2013; \$138.67.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 17th day of March, 2014

\sSean P. Maloney
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 17, 2014.

Oneida County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud