



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/154302

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 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 15, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent has established an overpayment of Child Care benefits to the petitioner.

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: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was employed at [redacted] LLC, during the time period of the overpayment; petitioner used Child Care (CC) benefits during the time period of the overpayment. Exhibit 2-D.

3. [REDACTED] [REDACTED], LLC paid Petitioner \$5.00/hour, and petitioner also received variable tip income. [REDACTED] [REDACTED], LLC did not report employee tip wages. *Id.*
4. Petitioner was overpaid W-2 CC in the total amount of \$2,812.10 for the time period of April 28, 2013 to June 30, 2013 (Claim Number [REDACTED]) because she was not participating in an approved activity. Exhibit 2-B(1).
5. Respondent issued a CC Client Overpayment Notice to the petitioner on December 10, 2013. *Id.*
6. Petitioner appealed the overpayment on December 19, 2013. Exhibit 1.

DISCUSSION

The County 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); See also Wis. Admin. Code §§ DCF 101.23 & 201.04(5)(a); *Child Care Assistance Manual* § 2.3.1.

A person is eligible for W-2 CC only if the person is participating in an approved activity. *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a); Wis. Admin. Code § DCF 101.26(1); Wis. Admin. Code § DCF 201.04(5)(a)2.b; *Child Care Assistance Manual* § 1.5.0.

As outlined below (1.5.3.1), working as a bartender is an approved activity only if the employee is earning minimum wage. As noted in the above Findings of Fact, [REDACTED] [REDACTED], LLC, employed petitioner at a wage rate of \$5.00, which is below minimum wage. [REDACTED] [REDACTED], LLC did not report its employees' tip wages. Therefore, it is not a qualified employer. It follows that petitioner was not in an approved activity during the time of the overpayment. For this reason, the overpayment must be affirmed.

1.5.3 Unsubsidized Employment

Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.

The Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting non-financial eligibility criteria and for receiving assistance as either:

- 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
- 2) Being legitimately self-employed.

All hours per week of unsubsidized employment, the schedule shift if second or third, and hours allocated for transportation must be documented in CARES Worker Web in case comments, on the employment page or in the Electronic Case File to substantiate the need for the child care assistance hours authorized. Indicate if the hours vary on a weekly basis. Documenting employment schedules is required for both types of unsubsidized employment: working for a qualified employer or legitimate self-employment. If a qualified employer has provided verification of the individual's hours per week of employment there is no need for them to also provide verification of a work schedule unless the worker finds the employment questionable.

The program definitions for "qualified employers" and "legitimate self-employment" are described below and reflect current Wisconsin Wage and Unemployment Insurance law:

1.5.3.1 Qualified Employers

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete. If the FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.

Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews.)

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.

The employer must have a Worker's Compensation insurance policy for its employees.

The employer must comply with Wisconsin minimum wage law for all employees.

The employer must file a New Hire report on the employee within thirty days of the hiring date.

The employer must report wages to Unemployment Insurance unless exempt.

Child Care Assistance Manual 1.5.3.; W-2 Manual 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2009-10); Wis. Admin. Code § DCF 101.26(1) (November 2008); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (September 2010).

Petitioner argues that the overpayment is not her fault because it was the employer, and not her, that failed to report employee wages as required. However, even if the overpayment is not petitioner's fault it must still be repaid. Wis. Admin. Code § DCF 101.23(3); See also, Wis. Admin. Code § DCF 201.04(5)(a)1. A CC overpayment is any 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 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); *Child Care Assistance Manual § 2.3.1*. Respondent has asserted that the overpayment here was the result of agency error in determining eligibility.

I further note that the respondent first identified the less-than-minimum-wage issue in June of 2013, and since then has provided the petitioner with opportunities to provide the necessary tip wage information. She has not done so to date. Additionally, I have reviewed the respondent's overpayment calculation worksheets and found no error. The petitioner has not identified any calculation error.

As such, based upon all of the foregoing and upon the record before me, I conclude that the respondent has established that petitioner received an overpayment of CC benefits.

CONCLUSIONS OF LAW

For the reasons discussed above, a claim may be established against petitioner for an overpayment of W-2 CC in the total amount of \$852.50 for the time period January 31, 2010 to February 28, 2010 (Claim Number [REDACTED]).

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 April, 2014

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 17, 2014.

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