



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/154427

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 27, 2013, under Wis. Admin. Code § HA 3.03, to review decisions by the Milwaukee Early Care Administration - MECA in regards to overpayments of Child Care benefits, a telephone hearing was held on January 22, 2014, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information.

The issues for determination are: (1) Whether the Department correctly determined that the petitioner was overpaid \$1,166.60 in WI Shares benefits in the period of November 4 – December 31, 2012; and (2) Whether the Department correctly determined that the petitioner was overpaid \$1,438.44 in WI Shares benefits in the period of June 9 – July 31, 2013.

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

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County. She was receiving WI Shares child care benefits from the Department in the periods of November 4 – December 31, 2012, and June 9 – July 31, 2013. See, Exhibits R-6 & R-8.

2. As of at least November 1, 2012, the petitioner was utilizing child care benefits so she could work. On or about November 2, 2012, she stopped working; but she continued to utilize child care; and she did not report that she had lost this job until January 3, 2013. See, Exhibit R-4, at pp. 6-8.
3. As of at least June 1, 2013, the petitioner was utilizing child care benefits so she could work. On June 8, 2013, she stopped working; but she continued to utilize child care; and she did not report that she had lost this job until July 12, 2013. See, Exhibit R-4, at pp. 7 - 8.
4. During the period of November 4 – December 31, 2012, the petitioner received child care benefits totaling \$1,166.60 (she was given credit for working the last two weeks of December); and during the period of June 9 – July 31, 2013, the petitioner received child care benefits totaling \$1,438.44 (including a mandatory 10 day continuing eligibility period, after a valid job end is reported.) See, Exhibits R-2, R-6 & R-8.
5. During the periods of November 4 – December 31, 2012, and June 9 – July 31, 2013, the petitioner was not working, participating in assigned W-2 activities, or attending any W-2 approved course of education. See, Exhibits R-5, at pp. 4-6; and R-4, pp. 1 - 9.
6. The petitioner was receiving ongoing occupational and physical therapy from medical providers in September – December, 2013, and again during the period of September, 2013 through at least January, 2014. See, Exhibit P-1.
7. The therapies described in Finding of Fact #6, above, were not approved by the W-2 agency at any time as part of an Employability Plan (“EP”) for the petitioner; nor has she produced such an EP document.
8. On December 2, 2013, the Department issued a Child Care Client Overpayment Notice to the petitioner informing her that it had determined that she was overpaid \$1,438.44 in child care benefits due to a client error, i.e., she misrepresented or failed to report a change in household income, a change in the number of hours worked, and a change in employment. A worksheet demonstrating the computations was attached. See, Exhibit R-2.
9. On December 2, 2013, the Department issued a Child Care Client Overpayment Notice to the petitioner informing her that it had determined that she was overpaid \$1,166.60 in child care benefits due to an intentional program violation, i.e., she misrepresented or failed to report a change in household income, a change in the number of hours worked, and a change in employment. A worksheet demonstrating the computations was attached. See, Exhibit R-2.
10. On December 27, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting both child care overpayment claims amounts.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the

assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

Based upon the rules I must find that the agency correctly is seeking recovery of the child care paid for petitioner in the periods of November 4 – December 31, 2012, and June 9 – July 31, 2013. The errors were both arising from failures of the petitioner to promptly and accurately report that she had lost jobs on two occasions while continued to take her children to childcare during the overpayment periods. The petitioner offers the defense that she was engaged in therapy during at least the former time period and she informed the W-2 agency of this and believed she had assent from the program. No evidence in the record besides her mere say so supports this conclusion. And certainly there is no W-2 Employability Plan document that incorporated therapy or schooling in any official W-2 approved activities plan. That testimony is not credible, contradicted by the fact that the child continued to receive child care, contradicted by the testimony of the agency witness that there is no W-2 Employability Plan approving therapy as an activity, and not established by the petitioner who routinely would receive a copy of such a Plan when executed, if one had been executed.

The preponderance of the evidence in this record establishes that the Department correctly determined that the petitioner was overpaid \$1,166.60 (CC Claim No. [REDACTED]) and \$1,438.44 (CC Claim No. [REDACTED]), as determined. These overpayment determinations must be sustained.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid child care [\$1,166.60 (CC Claim No. [REDACTED]) and \$1,438.44 (CC Claim No. [REDACTED])] because WI Shares benefits were paid when she was neither working nor in W-2 approved activities in both claim periods.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53

Given under my hand at the City of Madison,  
Wisconsin, this 11th day of February, 2014

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\sKenneth D. Duren, Assistant Administrator  
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 February 11, 2014.

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