



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/154526

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on May 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly ended Petitioner’s authorization effective November 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 Washington Avenue
Madison, Wisconsin 53703

By: Theresa Miles, Child Care Subsidy Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In January 2013, the Petitioner requested Child Care benefits. She received a child care authorization in March 2013. (Exhibit 5, pg. 6)

3. In June 2013, the Petitioner completed a six month report form and was found eligible for childcare and subsequently received authorization for childcare from 6/2/2103 to 8/31/2013. (Exhibit 5, pg. 5)
4. At that time, the Milwaukee Early Care Administration (MECA) reviewed Petitioner's case, for reasons not made clear in the record. MECA determined that the Petitioner's employer did not meet the definition of a qualified employer, because the employer was not reporting Petitioner's wages to the Department of Workforce Development (DWD). MECA then sought to recoup an alleged overpayment for the period of March 17, 2013 to May 31, 2013. (Exhibit 5, pg. 5)
5. On July 30, 2013, Petitioner's employer reported Petitioner's wages for the second quarter of 2010 through the first quarter of 2013. (Exhibit 5, pg. 11)
6. MECA rescinded the overpayment. (Testimony of Ms. Miles)
7. In October 2013, the Petitioner completed a renewal and was found eligible for childcare. (Exhibit 5, pg. 4)
8. On October 28, 2013, MECA again reviewed Petitioner's case, for reasons not stated in the record, and determined that Petitioner's employer did not meet the definition of a qualified employer, because the employer did not report Petitioner's wages to DWD for the second quarter of 2013. (Exhibit 5, pg. 3)
9. Petitioner's authorization for child care ended on November 30, 2013, but his eligibility for childcare never ended. (Testimony of Ms. Miles)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 3, 2014. (Exhibit 1)
11. Petitioner and his wife work for the same employer, a gas station, at the same location. (Testimony of Petitioner and his wife; Exhibit 5, pgs. 11 - 13)
12. Petitioner was paid by check. (Exhibit 4)
13. That same employer reported the quarterly wages earned by Petitioner's wife to DWD. (Exhibit 5, pgs. 12-13)

DISCUSSION

Background

In Milwaukee County, two different agencies make determinations for the Wisconsin Shares Child Care Program:

- 1) Milwaukee Enrollment Services (MILES) functions under the Department of Health Services and makes eligibility determinations for the Wisconsin Shares Child Care Program.
- 2) Milwaukee Early Care Administration (MECA) functions under the Department of Children and Families and makes determinations concerning the number of hours of childcare that may be authorized and investigates possible overpayments of child care benefits (this is also referred to as program integrity).

In the case at hand, MILES found Petitioner to be eligible for childcare benefits and did not seek any additional verification of employment.

Even though there was no apparent question about Petitioner's employment, MECA conducted its own review and discovered that Petitioner's employer was not reporting the Petitioner's quarterly wages, but was, in fact, reporting quarterly wages earned by Petitioner's wife.

Because Petitioner's employer was not reporting Petitioner's quarterly wages, MECA concluded that the employer was not a qualified employer. MECA went on to conclude that because the Petitioner was not working for a qualified employer, he was not engaged in an approved activity and as such, child care could not be authorized after November 30, 2013. (See Testimony of Ms. Miles)

The agency did not submit a copy of the notice ending Petitioner's authorization, but Petitioner did not claim to have a lack of notice and he timely appealed the issue.

Verification of Approved Activity

Wis. Admin. Code §DCF 201.04(5)(a)(2)(b) states that a parent must be participating in an "approved activity" to receive child care benefits and refers to Wis. Stats. §49.155(1m) to define an "approved activity".

Wis. Stats. §49.155(1m) states:

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. Participated 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, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Emphasis added

The Wisconsin Shares Child Care Manual (CCM) clarifies the Department of Children and Families' policies concerning child care benefits and the most recent version, updated on December 10, 2013, can be found on line at:

<http://dcf.wisconsin.gov/childcare/wishares/manual.htm>

Per CCM §1.5.3, “the Wisconsin Shares Child Care Assistance program recognizes only two categories of “unsubsidized employment”...: 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN) or 2) Being legitimately self-employed.”

CCM §1.5.3.1 defines a “Qualified Employer” as an employer having a FEIN documented in the CARES system. It further states that:

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...

- 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 30 days of the hiring date.
- The employer must report wages to Unemployment Insurance unless exempt.

The agency submitted an Operations Memo dated September 6, 2013, that predates the most recent, December 2013, update of the CCM. (See Exhibit 1, pgs. 17-23) However, even that memo indicates that:

Section 1.5.3.1 requires that the worker must verify that an employer is a qualified employer if the employer is a child care provider, a business owned or managed by the provider, or if the reported employment appears to be questionable. This operations memo updates criteria used in verifying whether or not an employer is qualified...”

(Exhibit 1, pgs. 17-18)

Thus, unless there is a question about employment, a qualified employer, is an employer with a FEIN.

Further verification of qualified employment is only necessary when 1) The employer is a child care provider, 2) The employer is a business owned or managed by the provider or 3) when employment appears to be questionable.

Please see also CCM §1.7.6, which indicates that when an applicant has, “made a reasonable effort and cannot obtain the information, the application must not be denied based upon the information that could not be obtained. Instead, the agency must use the available information to process the case and then reassess the case when the requested information is received. The exception is for the FEIN verification requirement for qualified unsubsidized employment as an approved activity.” *Emphasis added.* This supports the contention that the basic definition of a qualified employer is one with a FEIN.

It is undisputed that Petitioner’s employer has a FEIN. Thus, the employer met the basic definition of a qualified employer.

The Petitioner’s employer is a gas station; it is neither a child care provider, nor a business owned or managed by the provider. There is nothing in the record to suggest the Petitioner’s employment was questionable when he completed his renewal in October 2013. Consequently, MECA did not need to

verify or inquire further into whether the employer had a worker's compensation policy, paid minimum wage, filed a new hire report or reported wages to unemployment. Indeed, doing so was contrary to CCM §1.7.1 which states:

1.7.1 Authority to Request Information

The Wisconsin Works or County/Tribal Human Service agency may request any information that is necessary and appropriate in order to make a correct eligibility decision. However, do not verify an item that is not required, or is not questionable.

Emphasis added

None-the-less, the agency did engage in further inquiry and discovered the failure of the Petitioner's employer to report his wages. Given that the employer previously reported Petitioner's wage, albeit late, and has consistently reported wages for the Petitioner's wife, this made the Petitioner's employment questionable. Under CCM §1.7.8, when an agency receives contradictory information regarding any eligibility criteria, the agency should request documentation to substantiate the applicant's claim and allow the applicant (7) business days to obtain such documentation." There is no indication in the record that the agency made any request for further verification. As such, the agency did not correctly end the Petitioner's authorization.

Other Matters

The Petitioner should note that under Wis. Stats. §108.205(1), "Each employer shall file with the department, in such form as the department by rule requires, a quarterly report showing the name, social security number and wages paid to each employee by the employer in employment with the employer during the quarter. The employer shall file the report no later than the last day of the month following the completion of each quarter." This is repeated in Wis. Admin. Code §DWD 111.02

If an employer failed to timely file wage data, they may incur fines under Wis. Admin. Code §DWD 111.07 and Wis. Stats. § 108.22 of \$100 per quarterly report or \$20 per employee, whichever amount is greater.

If the Petitioner wishes to verify whether his employer is filing quarterly reports, he may contact the Department of Workforce Development Center Benefits Center at (414) 438-7713 to inquire about his own wages.

CONCLUSIONS OF LAW

The agency did not correctly end the Petitioner's child care authorization on November 30, 2013.

THEREFORE, it is

ORDERED

That the agency authorize childcare for Petitioner from December 1, 2013 forward, if he is otherwise eligible. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

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 served and filed with the appropriate court 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. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Milwaukee,
Wisconsin, this 28th day of May, 2014.

\sMayumi M. Ishii
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 May 28, 2014.

Milwaukee Enrollment Services
Child Care Benefits