



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/154569

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 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 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

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: LaReina Horton

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a child care overpayment notice, dated November 19, 2013. It indicated that Petitioner had been overissued child care benefits in the amount of \$1422.08 during the period from January 6, 2013 through March 31, 2013 (claim # [REDACTED]).
3. Petitioner received the child care involved here for one child.

4. The agency alleged this overpayment because Petitioner was a student enrolled in college (Wisconsin Lutheran College) but not working at least 20 hours per month.
5. Petitioner was employed during the period involved here in an on call status as a floater with [REDACTED] and the employer reported that she was expected to earn no more than \$100.00 per month. Her first quarter of 2013 wages were reported to the State as being \$172.35.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code. Wis. Admin. 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 or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes the following:

1.5.7 Technical College or Course of Study Producing Employment

Participate in a course of study at a technical college or participate in a course of study that would produce an employment skill as determined by the department if the county Human Services or other agency or its subcontracted eligibility determination agency determines that the course or courses would facilitate the individual to maintain employment.

- A school and work schedule is required for all participants.
- The applicant/child care authorizing agency must determine that the education will provide an employment skill that facilitates the employed individual’s efforts to maintain their current position or enhance employment in the same or another profession.
- The determination shall be entered by the agency into CARES case comments.

- Apprenticeships are an allowable approved activity for Wisconsin Shares child care assistance. The apprenticeship may be paid or unpaid. Apprenticeships are exempt from the five hour per week work requirement.
- Except for persons in apprenticeships, the individual is employed at least five (5) hours per week or 20 hours per month at the time the authorization for school begins and continues to be employed at least five (5) hours per week or 20 hours per month throughout the semester. A child care administrative agency may have a policy that exceeds 20 hours per month if the policy is in writing is applied to all parents and is made available to the parent.
- The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment, or
- The employment is a work study position, or
- The employment is directly related to the individual's school and their participation in the employment while in school produces a measurable cash value such as: fellowships, working for room and board as a Resident Assistant in a dormitory or private apartment, teaching assistant positions for tuition credits, or any other education-related employment that has a measurable cash value equivalent to five (5) hours per week at the state
- Unsubsidized employment that is on an "on-call" basis or registration with a temporary employment agency is not qualified as employment for approval of Technical College or Course of Study Producing Employment as an approved activity. The individual must actually work the minimum hours on a weekly or monthly basis.
- Wisconsin Shares child care assistance for participating in education under this section is limited to no more than 24 months per lifetime of the parent. The 24 months need not be consecutive.
- The 24 months shall be recorded in the CSAW system by the agency or child care authorizing agency.
- The 24 month rule does not apply to individuals in a subsidized employment position in W-2 or in a Tribal TANF employment position.
- Wisconsin Shares child care assistance is not available for study time.
- Wisconsin Shares child care assistance is not available for online courses that are self-paced and do not require specific log on times for class sessions.

Finally, Petitioner contends that none of this is fair. The Division of Hearings and Appeals does not, however, possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977)*. The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

As the evidence demonstrates that Petitioner was a post-secondary student who was not employed at least 20 hours per month during the period involved here, she was not eligible for child care for that time and the agency correctly seeks to recover the overissuance regardless of error.

CONCLUSIONS OF LAW

That the evidence demonstrates that the agency correctly seeks recovery of an overpayment of child care as alleged because Petitioner, as a post-secondary student, was not eligible for child care because she was not employed at least 20 hours per month.

THEREFORE, it is

ORDERED

That this appeal 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 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 21st day of April, 2014

\sDavid D. Fleming
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 April 21, 2014.

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