



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted names and addresses]

DECISION

CCO/153534

&

CCO/154641

PRELIMINARY RECITALS

Pursuant to petitions filed November 18, 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 hearing was held on December 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioners were jointly overpaid Child Care Benefits of \$1,044.83 in the period of May 12 – August 31, 2013; and \$1,203.65 in the period of September-October, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:

[Redacted names and addresses]

Respondent:

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

By: Tameka Terrell, Investigator
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 [Redacted] (hereafter sometimes referred to as "K.G.") (CARES # [Redacted]) is a resident of Milwaukee County. So was petitioner [Redacted] (hereafter sometimes referred to as "A.O.") K.G. was the casehead of a Child Care Benefits household that was

receiving Child Care Benefits during the periods of May 12 – August 31, 2013; and September 1 – October 31, 2013.

2. On March 20, 2013, petitioner K.G. came to the agency requesting to add his girlfriend, A.O., and their infant child-in-common [REDACTED], to his FS case, and to request Child Care Benefits and Medical Assistance that included them. He also reported that he was self-employed, and that A.O. was attending the [REDACTED] in the so-called “PACE” Program.
3. On March 25, 2013, among other actions the agency opened Child Care eligibility for the household.
4. Conversely, on March 26, 2013, the agency informed the petitioners that Child Care could not be opened because no schedule for PACE classes for A.O. had been received, nor any corroboration from a FEP worker that she was in PACE had been received. The agency did confirm that she was attending [REDACTED]. Petitioner K.G. also reported he had been working in his self-employment regularly since early February, i.e., about 80 hours per month, doing odd jobs.
5. On or about May 1, 2013, petitioner K.G. again contacted the agency and again inquired as to whether Child Care coverage had been extended to the household as requested; and he was informed no, because A.O.’s school schedule was still needed.
6. On or about May 3, 2013, A.O.’s [REDACTED] school schedule was received by the agency, and eligibility was confirmed that date.
7. In at least the period of May 12 – August 31, 2013, K.G. was residing with his girlfriend A.O., and [REDACTED]; and the household was receiving Child Care Benefits.
8. On or about July 22, 2013, petitioner K.G. came to the agency to complete a periodic renewal application; he requested that Child Care Benefits continue; the agency informed him that a new school schedule will be needed for A.O.
9. Later on July 22, 2013, an agency worker reviewed the case information, and realized for the first time that A.O. was not enrolled in the PACE Program and was therefore not in an approved Child Care educational activity, and therefore, she was available to care for the child-in-common.
10. On August 2, 2013, the agency re-ran Child Care eligibility testing, and determined that the household was not eligible and the case must close.
11. On August 6, 2013, K.G. called to inquire about why Child Care Benefits had ended to his household. He was informed that Child Care Benefits had ended because A.O. was not in school and would not be until October, 2013.
12. On August 8, 2013, K.G. called the agency to inquire about Child Care Benefits and he was told that A.O. would need to again file school enrollment and attendance documents.
13. On August 15, 2013, an agency worker noted that a referral for Child Care Benefits assessment was again received from the couple, but it was a two adult household, with one working and the other not working or in an approved W-2 activity; and the case would remain closed.
14. Between August 15 and September 12, 2013, petitioner K.G. continued to seek to have Child Care Benefits restored and the agency repeatedly requested proof that A.O. is in a W-2 approved educational activity, i.e., the PACE Program.
15. Finally, on September 12, 2013, a representative of [REDACTED]’s PACE Program reported to the agency that A.O. is not in the PACE Program at [REDACTED]. Apparently, she was not eligible for PACE because she was not eligible for FS, and she was not eligible for FS because she is an ineligible alien. The agency informed the household of this information and that Child Care remained closed.

16. On September 12, 2013, after receiving this information from the agency, K.G. called the agency and reported that A.O. doesn't live with him, and he wanted eligibility for Child Care run for a household composed of himself and his child.
17. Subsequently, the agency reviewed the matter, and after much consideration and internal consideration, granted the Child Care Benefits authorization to the requesting petitioner; and also referred the matter for fraud investigation due to suspicions about the sudden move out of the home by the mother given that the child is an infant.
18. On or about November 9, 2013, the agency called the petitioner father's home to speak to him, and the phone was answered by A.O. A.O. provided the worker with a cell phone number for K.G., and the worker called and left a message informing him that [REDACTED] records indicate A.O. has the same residence address as him, that she answered the phone when his residence was called, that the agency would be adding her back to the Child Care Benefits household, and that the matter would be reviewed for an overpayment determination.
19. On or about November 13 and 14, 2013, the agency issued a Child Care Overpayment Notification, attached worksheet, and CARES generated Child Care Overpayment Notification to the petitioners, jointly, informing both that they had been overpaid \$1,044.83 in Child Care Benefits in the period of May 12 – August 31, 2013, due to an agency error in determining eligibility.
20. On or about November 13 and 14, 2013, the agency issued a second Child Care Overpayment Notification, attached worksheet, and CARES generated Child Care Overpayment Notification (this last document was actually issued on December 11, 2013) to the petitioners, again jointly, informing both that they had been overpaid \$1,203.65 in Child Care Benefits in the period of September 1 – October 31, 2013, due to an intentional program violation error by the petitioners to misrepresent or fail to report accurate household composition.
21. On November 18, 2013, the petitioners filed an appeal with the Division of Hearings & Appeals contesting the two Child Care Benefits overpayment determinations described in Findings of Fact #19 and #20, above; indicating they both contested the actions of DCF.
22. At no time between May 12 and October 31, 2013, was petitioner A.O. working or participating in an approved W-2 activity or educational program.
23. Both Kevin [REDACTED] and [REDACTED] appeared for the hearing held on December 18, 2013, and contested the correctness of both overpayments. A second appeal file for [REDACTED] has been denominated as DHA Case No. CCO/154641, and both individual files have been resolved by this combined decision arising from the hearing in which both appeared and contested the overpayments.

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).

Petitioner casehead (K. G.) was working, at least part-time with regularity in both overpayment periods. But co-petitioner girlfriend (A.O.) was not working or in any approved W-2 activity, including the PACE Program, at any time in either overpayment period. While she *tried* to enroll in PACE, and the couple provided enough information to convince the agency that she was attending ██████ and maybe she was enrolled in PACE, she was not; and could not be so enrolled, because of her alien status. That flaw cannot be remedied. She was never enrolled in PACE and was never in an approved activity or working in these two test periods. As far as the Child Care Benefits program was concerned, she was available to provide child care, or make child care arrangements. Likewise, the father casehead was available, in fact, for many hours during the week because he was working only part-time for much of these two time periods.

Thus the family was ineligible for child care. There is absolutely no doubt that is the result on the earlier in time overpayment claim. As to the latter time period, the couple asserted that the girlfriend (A.O.) moved out. Given the fact that she was reached easily by telephone at the same residence in early November, 2013; that she was re-enrolled in the fall semester at ██████ with the same residence address as before which she shared with the father casehead; given that her child was an infant; and that the couple “resumed” portraying themselves as living together after the overpayments were determined, I find this asserted move-out by A.O. to have been fiction, and assertions to this as fact are self-serving, evasive, highly convenient, and simply not credible. Under the various public assistance programs, certain benefits are not extended to non-citizens. That is fact, and was set forth by the Legislature and/or Congress. Of this, there should be no illusion. Some planning as to educational attainment, as here, does not include public assistance subsidy. Rather, the non-citizen, and spouse or significant other, must plan in a way to do without some of the benefits of citizenship.

There are no exceptions written into Wis. Stat. §49.155(1m)(a) for these circumstances. Child care is available ONLY for working or participating in W-2 activities. I have no choice to conclude that petitioners were jointly overpaid child care because they were not using it for the statutorily mandated reasons.

CONCLUSIONS OF LAW

- 1.) That the preponderance of the evidence demonstrates that the Department correctly determined that the petitioners (K.G. and A.O.) were jointly overpaid \$1,044.83 in Child Care Benefits during the period of May 12 – August 31, 2013, due to agency error in approving the Child Care Benefits when biological mother A.O. was not working or participating in a W-2 approved activity; she (A.O.) was not in the PACE Program and thus not in an approved activity in this period; and she (A.O.) could have been providing care to the couple’s child-in-common.
- 2.) That the preponderance of the evidence demonstrates that the Department correctly determined that the petitioners (K.G. and A.O.) were jointly overpaid \$1,203.65 in Child Care Benefits during the period of September 1 – October 31, 2013, due to an intentional program violation by the petitioners in misrepresenting their household to include only father casehead (K.G.) and his minor daughter, when biological mother (A.O.) was also living in the household; because she (A.O.) was no longer employed or participating in W-2 in an approved activity; and the household was otherwise ineligible

for Child Care Benefits paid in this period; she (A.O.) could have been providing care to the couple's child-in-common.

THEREFORE, it is

ORDERED

That the petitions for review ([REDACTED] in CCO/153534 and [REDACTED] in CCO/154641) herein be, and the same hereby are, 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 Madison,
Wisconsin, this 13th day of January, 2014

\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 January 13, 2014.

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