



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/154860

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Douglas County Department of Human Services in regard to Child Care, a hearing was held on February 20, 2014, at Superior, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Child Care benefits that occurred because of the agency's error.

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: Tom Ostrander

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Douglas County.
2. The petitioner was an ongoing recipient of Child Care benefits who enrolled in college and quit working on September 6, 2013.

3. Although the petitioner reported to the agency on October 8, 2013, that her employment ended, the agency continued providing Child Care benefits to her and she continued using it.
4. From September 22, 2013, through November 30, 2013, the petitioner received \$1,208 in Child Care benefits. She was never working in unsubsidized employment or participating in job training, a job search under the FoodShare program, or an approved technical school program during this period.

DISCUSSION

The county agency seeks to recover \$1,208 in Child Care benefits the petitioner received September 22, 2013, through November 30, 2013, because it contends that she was not engaged in a qualifying activity. Child Care benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The W-2 statute requires the department to recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

Recipients must report changes of circumstances within 10 days. *Child Care Manual*, § 1.15.1.

The petitioner had been receiving Child Care benefits. She enrolled in college last fall and quit working on September 6, 2013. She should have reported this within 10 days, or by September 16, which would have ended her benefits the next week. She actually reported the change on October 8, but the agency continued to find her eligible for benefits even though she was not working in unsubsidized employment or participating in job training, a job search under the FoodShare program, or an approved technical school program. She continued to use the program to care for her child while she attended college because she believed she was still eligible. As a result, from September 22, 2013, through November 30, 2013, she received \$1,208 in Child Care benefits. Although this overpayment was primarily the agency's fault, Wis. Stat. § 49.195(3) and Wis. Adm. Code, § DCF 101.23(1)(g), require the petitioner to repay it.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of Child Care benefits that occurred primarily because of the agency's error.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 24th day of February, 2014

\sMichael D. O'Brien
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 24, 2014.

Douglas County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud