



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



CCO/154868

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, 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 February 26, 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:



Respondent:

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

By: Atty. Joseph McCleer, DCF-OLC
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 January 15, 2014. It indicated that Petitioner had been overissued child care benefits in the amount of \$7134.81 during the period from January 1, 2013 through December 31, 2013 (claim # [redacted]) though there was no overpayment for the months of August and September 2013.

3. The agency alleged this overpayment for multiple reasons – requesting more hours of care than actually worked, failing to report her husband in the home and failing to disclose his income and nonparticipation in W-2 activities. Regardless of the other reasons, the overpayment calculation breaks down as follows:
  - 1/2013 – over the income limit based on husband income
  - 2/2013 - 4/2013 – higher copay based on husband income
  - 5/2013 -12/2013 – over income limit based on husband income
4. Petitioner lived at the following addresses during time periods of relevant here:
  - [REDACTED] – through the end of 2012
  - [REDACTED] - 2013
  - [REDACTED] - as of 1/1/2014
5. The agency bases the conclusion that the husband was in the home of Petitioner on the following:
  - [REDACTED] – voter registration record of November 2012 (Ex # 5, pp 28-31); employer records and DMV records
  - [REDACTED] - employer records, DMV records and Thomson Reuters data
  - [REDACTED] – employer record (although the employer records states [REDACTED] – this is likely a typographical error<sup>1</sup>).
6. The amount of income of Petitioner’s husband was not an issue in this case. The group size was 5 with the husband in the home.

### 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

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<sup>1</sup> Though not in the hearing record, I note that the City of Milwaukee Tax Assessor data base does not show a [REDACTED] property.

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.

Finally, there is an income test for child care eligibility, both at application and for ongoing eligibility. While initial eligibility requires income below 185% of the Federal Poverty level, to maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §§1.6.1 & 1.6.3. As Petitioner applied for child care in January 2013 the income limit was 185% of the FPL or \$4164.00 for a group of 5. *See Operations Memo 12-06, issued and effective February 1, 2012.* As Petitioner’s case was ongoing as of February 2013 the income limit became 200% of the Federal Poverty Level (FPL) or \$4595.00 as of February 1, 2013. *See Operations Memo 13-04, issued 2/27/13 and effective 2/1/13.*

Here the agency overpayment notice indicates multiple reasons for the overpayment but the worksheet detailing the overpayment is based entirely on the agency conclusion that Petitioner’s husband was in the home and that his income either put household income above the income eligibility limit or would have created a higher co-pay. This is a close case but I am concluding that the agency has submitted evidence sufficient to make a prima facie case that he was in the home and that Petitioner has not offered sufficient evidence to rebut that.

Though the landlord for the [REDACTED] address provided a letter for the agency that indicates that the husband was removed from the lease for the [REDACTED] address in August 2012, the agency evidence shows that Petitioner and her husband both used the same address at [REDACTED] for voting purposes in the November 2012 election. His employment records, a DMV record and a data base subscribed to by the Department show them at the same address through 2013. In early 2014 Petitioner moved and again his employer shows him at the new address on [REDACTED] (again, the employer indicates [REDACTED] but this seems to be a typographical error).

Petitioner testified that her husband had had an affair and was no longer living with her. While it is true that he was not on the lease for the [REDACTED] residence as of mid-2012, the consistent use of the same address just before, during and apparently after the overpayment period is persuasive evidence of him being in the home with Petitioner. If the relationship between Petitioner and her husband had deteriorated to the degree she indicates it makes no sense that he would not be using another address – his own, his mother’s, his new significant other, etc. – instead of Petitioner’s. It is also worth noting that case notes from the W-2 agency that Petitioner was working with in the later part of 2013 state that Petitioner told the W-2 agency that she was going through a divorce and notes court appearances for the divorce (see, e.g., Exhibit # 7 at page 9) but, curiously, she did not offer divorce documents as part of her case. Further, there is nothing from Petitioner to indicate that her husband was at another address, e.g., a school emergency contact record, a piece of mail, a divorce related document, a tax return, etc. Again, a close call but the agency has presented a prima facie case that Petitioner has not rebutted.

Having concluded that the husband was in the home and, given the agency overpayment calculations that indicate that his presence and income caused the calculated overpayment, there is no need to address the other aspects of the reasons alleged for the overpayment noted in the overpayment notice.

**CONCLUSIONS OF LAW**

That the evidence offered by the agency is sufficient to demonstrate by a preponderance of the evidence that Petitioner was overissued child care benefits because her husband was in the home and his income was not counted for eligibility and copayment purposes.

**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 28th day of May, 2014

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\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 May 28, 2014.

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