FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/155186

PRELIMINARY RECITALS

Pursuant to a petition filed February 3, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on March 5, 2014, by telephone.

The issue for determination is whether the agency correctly determined a child care overpayment for assistance issued when petitioner was not working or in a Wisconsin Works (W-2) activity.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Shawnte Julien
Milwaukee Early Care Administration
Department of Children And Families
1220 W. Vliet St., 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Milwaukee County.
2. Petitioner received child care assistance in 2013 for times when she was working. Petitioner stopped working at [redacted] on June 26, 2013.

3. Petitioner contacted someone at the agency, who told her that she could take her son to child care while looking for a job. She thus continued to do so. There is no record of this call in agency case comments.

4. On July 11, 2013 petitioner had contact with another agency worker who told her she could receive child care assistance only if she was conducting job search as a component of a W-2 case. She took her son out of child care then.

5. By a notice dated January 28, 2014, the agency informed petitioner that she was overpaid $254.14 in child care assistance in late June and early July, 2013 because she utilized the service when she was not working or in W-2, claim no. [redacted].

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. 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. Wis. Admin. 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, §2.1.5.1. Recovery must occur even if the error was caused by agency error; agency error is one of the three categories of recovery along with fraud and client error.

In this case the error was entered as client error because there was no record that petitioner reported the end of her job until the July 11, 2013 contact. I do not know who petitioner spoke with in late June or what her question/report was at that time, but even if she reported the job ending and the working erroneously told her that she could keep taking her son to child care, the overpayment still would have to be recovered. There is no difference between agency error and client error recovery.

I will dismiss petitioner's appeal because the overpayment must be recovered regardless of error. The agency record shows the error to be client error, and there is insufficient evidence to conclude that it was agency error.

CONCLUSIONS OF LAW

The agency correctly seeks recovery of a child care overpayment for a period when petitioner took her son to child care when she was not working or in a W-2 activity.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 7th day of March, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 7, 2014.

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