



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/155307

PRELIMINARY RECITALS

Pursuant to a petition filed February 5, 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 April 15, 2014, by telephone. A hearing set for March 12, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner received child care assistance when she was not employed or in a Wisconsin Works (W-2) activity.

PARTIES IN INTEREST:

Petitioner:



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 2011, with her employment being at [redacted]'s [redacted]. Her children were authorized to attend [redacted]'s. [redacted]'s records showed her children to be in attendance consistently between January 23 and May 29, 2011, and the Wisconsin Shares program was billed for their attendance.

3. In May, 2011, while petitioner was in for a review, she reported that the job at ██████'s ended in January, 2011. Petitioner provided verification from ██████'s stating that her employment ended January 21, 2011. Petitioner reported no other employment in the intervening time.
4. By a notice dated January 9, 2014, the agency informed petitioner that she was overpaid \$4,208.91 in child care assistance between January 23 and May 31, 2011, claim no. ██████.

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.

Agency records show that petitioner was not working between January 21 and May 29, 2011, and that the Shares program was billed by ██████'s for child care for petitioner's children during that time. The agency obtained copies of ██████'s attendance sheets, signed contemporaneously by petitioner, to verify the children's attendance.

Petitioner testified that she never took the children to ██████'s unless she was working there. However, not only did petitioner herself provide verification that she did not work at ██████'s during that period, state wage records also show no income during the period. Petitioner stated that ██████'s took part in shady practices, but ██████'s does not appear on the Department's list of suspended providers, and there is no other evidence to support petitioner's testimony.

I must conclude that the overpayment was calculated and imposed correctly. The best evidence is that petitioner took her children to the child care center during a four-month period when she was not employed.

CONCLUSIONS OF LAW

The agency correctly determined a child care overpayment against petitioner because her child attended a child care center during a four-month period in 2011 when petitioner was not employed 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

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of April, 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 April 22, 2014.

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