



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/155350

PRELIMINARY RECITALS

Pursuant to a petition filed February 07, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Forest County Department of Social Services in regard to Child Care, a telephone hearing was held on April 07, 2014.

The issue for determination is whether the respondent has established an overpayment of Child Care benefits to the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By, [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Hieptas

Forest County Department of Social Services
200 E. Madison Street
Crandon, WI 54520

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. Petitioner received child care assistance from at least April 1, 2013, to August 31, 2013.

3. In August, the respondent found that it did not possess necessary income information, and requested that from the petitioner.
4. The petitioner received the request, but did not submit the verification because the day care provider was going out of business.
5. The respondent subsequently notified petitioner of a child care overpayment in the amount of \$1128.25, claim no. [REDACTED].
6. The basis for the overpayment is the failure to provide requested verification.

DISCUSSION

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

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.

The testimony provided at hearing revealed a good deal of confusion. The respondent testified corroborating the accuracy of its written statement, to wit:

Case was QA'd by the state in August because they could not locate any recent pay stub s for [REDACTED] ad [REDACTED] which we need to have. ... A review was due in spring but as far as I can tell there was never any notice sent to them that a review was due. On March 15th someone from another county updated their foodshare because there was a break in benefits and when she corrected it – it also update child care. It made both programs good from 4-1-13 – 8-31-13. I really do not know why a review notice was never sent. We did request income verification on 8-14-13 which we never received.

See, Exhibit 2.

Petitioner's wife's testimony was credible and consistent. Petitioner's wife testified that income verification was not returned because the day care provider was closing its doors. Petitioner's wife thought that the verification was needed prospectively; since the day care provider would no longer be providing services, petitioner assumed that there would not be a need for verification. When the overpayment notice was received, petitioner's wife called and promptly submitted the requested income verification.

I note that the respondent did not include in the hearing record of copy of the verification request or any overpayment notice. As such, it is impossible for me to discern whether the petitioner's presumption that the income information was needed prospectively was a reasonable one. The record does not disclose whether the verification request included an explanation as to why the verification was being requested, or even what date range was being requested.

Furthermore, the respondent concedes that it did receive the verification information on or about January 23, 2014. Regardless, the respondent testified that the overpayment was based entirely on the failure to timely provide verification. While the pay stubs were obviously provided late under any definition, I am concerned by the respondent's refusal to use that information to verify whether, in fact, any overpayment actually occurred. This is especially troubling where the respondent has admitted that it had not been requesting proper verifications or renewal interviews in the preceding months, and possibly years.

Exhibit 2 contains only skeletal information showing how the overpayment was calculated. Furthermore, the respondent has indicated that on March 15th "someone from another county" updated petitioner's foodshare benefits "and when she corrected it – it also updated child care." See, Exhibit 2. This would appear to indicate that this person from another county had income information that demonstrated that petitioner was qualified for Child Care benefits. The record is silent on that topic, and with regard to whether/how the Child Care benefits were extended without verification. Based upon a review of the record before me, I cannot find that the county agency has met its burden of proof to establish the overpayment.

CONCLUSIONS OF LAW

The respondent has not established an overpayment of Child Care benefits to the petitioner.

NOW, THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED] and to cease recovery of it. The county shall take the action within 10 days of this decision.

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 1st day of July, 2014.

\sPeter McCombs
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 July 1, 2014.

Forest County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud