



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/155685

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Child Care, a hearing was held on June 30, 2014, at La Crosse, Wisconsin.

The issue for determination is whether the agency erred in its determination of liability for two CC overpayment claims of \$691 and \$2860.55.

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: Bob Uebele

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of La Crosse County.
2. Petitioner received CC benefits of \$691 from January to March 2012. During this period the agency had not budgeted accurate income and petitioner should actually have been ineligible.

3. Petitioner received CC benefits from August 2012 to March 2013 in the amount of \$2,860.55. During this time the agency had budgeted incorrect income. Had income been budgeted correctly petitioner would not have been eligible for CC benefits.
4. The agency sent notices of overpayment on January 8, 2014.
5. Petitioner filed a timely appeal of both claims.

### DISCUSSION

Child Care Benefits are provided to W-2 participants who are working, 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 income limit for new applicants is 185% of the federal poverty level and 200% of federal poverty level “for an individual who is already receiving a child care subsidy.” Wis. Stat. § 49.155(1m)(c)1. 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.

The applicable CC overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code § DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner.

At hearing, the agency established the bonuses and commissions that were unreported at the time would have placed petitioner in an ineligible status during the overpayment period from January to March 2012. This resulted in a \$691 overpayment. Petitioner explained that her faxed documentation may not have gone through the fax properly and that she provided all the information she was asked. Clearly, petitioner is concerned that she is being accused of fault. She also wondered why the agency did not catch this sooner and ask her about it. Petitioner was very defensive and ultimately explained that she did not “do it on purpose.” But, the issue is simply whether she received benefits to which she was not entitled. Petitioner did not dispute that she did receive the benefits or that she was factually ineligible.

With regard to the second claim from August 2012 to March 2013, the agency argued that petitioner re-applied for CC in August 2012 after being terminated for failure to provide employer income verification. With the new application, petitioner submitted income verification of two pay stubs to the agency dated July 20 and August 3, 2012. But, there was a bonus check dated July 30, 2012 that petitioner did not send. If she had provided that check, she would not have been found eligible for CC as it would have placed her above 200% of FPL. Petitioner argued that she sent in the required documentation but the pages must have gotten stuck together in the fax machine. She had no confirmation page nor did she keep records of what was sent. Again, this does not matter as petitioner does not argue that the income discovered by the agency is not accurate. Petitioner received more CC than she was entitled to regardless of the reason why. The overpayments must be paid back.

### CONCLUSIONS OF LAW

The Department did not err in its determination of the CC overpayment claims.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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**

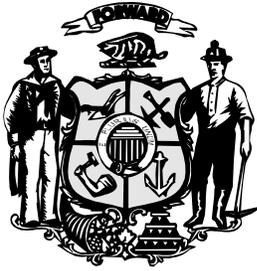
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those 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 31st day of July, 2014

---

\sJohn P. Tedesco  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 31, 2014.

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