



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/156046

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 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 April 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid Child Care Benefits due to administrative error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Shawnte Julian

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. During the period of May 5, 2013, through August 31, 2013, she was receiving Child Care Benefits for her minor child.
2. The petitioner reported her wage information to the agency, but the agency erred in budgeting incorrect wages. The agency discovered the error in May, 2013, but continued providing benefits through August, 2013.

3. During the period of May 5, 2013, through August 31, 2013, petitioner's household had income that made petitioner eligible for less Child Care benefits than were, in fact, issued. See, Exhibit B(2).
4. On February 24, 2014, the county agency prepared and issued a Child Care Overpayment Notice and Worksheet to the petitioner informing her that she had been overpaid \$272.51 in Child Care Benefits due to a non-client error from May 5, 2013, through August 31, 2013. See, Exhibit B.
5. The petitioner filed an appeal with the Division of Hearings & Appeals on March 14, 2014. Exhibit 1.

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.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat. § 49.155(1m). The agencies responsible for distributing childcare funds are also required to take all steps necessary to recover funds paid to a childcare provider when the parent was not eligible for the level of benefits issued. Child Day Care Manual, Chapter 1, 10.3.0. Wis. Admin. Code § DWD 12.23(3)(c) limits the recovery of administrative error overpayments to the period of one year prior to discovery.

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 should have been less. W-2 Manual, Chapter 2, §2.3.1.

There is no question that the county paid for child care services during the period in question. The Department asserts that child care benefits paid should have been less, due to petitioner's income. The petitioner did not assert that she had not received the child care benefits, or that her household income was incorrectly determined by the respondent. Rather, she asserted that she had accurately reported to the agency her income. The agency concedes that its error caused the overpayment.

Thus, the error was not of petitioner's making, and she argues that it is unfair to now find she was overpaid Child Care Benefits because of the agency (and CARES benefits system) failure to accurately determine her eligibility in the first place. The department's written policy, however, specifically requires recovery of Child Care Benefits overpaid due to worker error or incorrectly entering information into the CARES database. As such, the agency's overpayment determination against the petitioner must be sustained in its entirety.

CONCLUSIONS OF LAW

That the county agency correctly determined that the petitioner was overissued \$272.51 of Child Care Benefits (Claim # [REDACTED]) during the period of May 5, 2013, through August 31, 2013, due to administrative error.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 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.

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