



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/156201

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regards to a determination that the petitioner was overpaid Child Care benefits, a telephone hearing was held on April 24, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$2,323.75 in Child Care benefits during the period of February 7 – August 10, 2013, because she was not in qualified employment.

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was the casehead of a Child Care benefits household in at least the period of February 17 – August 31, 2013; and the household received \$2,323.75 of Child Care benefits in this time period.
2. During the period of February 17 – August 31, 2013, the petitioner was working for [redacted]'s [redacted] Store in Milwaukee, Wisconsin, but the store was in financial distress, and the employer

was not reporting wages to the Wisconsin Department of Workforce Development for any employees, or covered by any worker's compensation insurance in the test period. See, Exhibits B, at pp. 15-16, and E, at pp. 57-60.

3. The petitioner reports not being paid for all she was owed, and that the employer went into bankruptcy and she was never paid for what she was owed during the final months of the business.
4. On February 14, 2014, the Department issued a Child Care Client Overpayment Notice to the petitioner informing her that the agency had determined that she had been overpaid \$2,323.75 in Child Care benefits in the period of February 17 – August 31, 2014, due to her misrepresentation of or failure to work for a qualified employer, due to administrative error.
5. On February 17, 2014, the Department issued a Child Care Overpayment Notification and Worksheets to the petitioner again informing her that the agency had determined that she had been overpaid \$2,323.75 in Child Care benefits from February 17 – August 31, 2013, due to a non-client error.
6. On March 21, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Child Care benefits overpayment determination of February 14 & 17, 2013.

DISCUSSION

The petitioner admits receipt of the child care benefits in the time period alleged. She does not contest the computation of the amount paid by the agency to her household. Rather, she asserts that she was working and it was not her fault that the employer was not engaging in being a “qualified employer” and reporting wages as required by law.

It is, however, clear that the employers were not reporting wages, so [REDACTED] and/or [REDACTED] [REDACTED] were not qualified employers. See, Exhibit B, at pp. 16-17. In addition, it is also clear that the business did not have worker's compensation insurance in the test period. See, Exhibit E, at pp. 57 – 60. This means the petitioner was not in “qualified employment” and she was not entitled to the Child Care benefits she received in the test period.

The *Child Care Manual* provides in Chapter 1, as follows:

1.5.3 Unsubsidized Employment

Work in an unsubsidized job, including training provided by an employer during the regular hours of employment. Subsidized employment is not considered an approved activity for Wisconsin Shares child care subsidy, including Transitional Jobs that are not a work experience as part of a FSET Employment Plan.

The Wisconsin Shares Child Care Assistance program recognizes only two categories of unsubsidized employment for meeting non-financial eligibility criteria and for receiving assistance as either:

- 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
- 2) Being legitimately self-employed.

All hours per week of unsubsidized employment, the schedule shift if second or third, and hours allocated for transportation must be documented in CARES Worker Web in case comments, on the employment page or in the Electronic Case File to substantiate the

need for the child care assistance hours authorized. Indicate if the hours vary on a weekly basis.

Documenting employment schedules is required for both types of unsubsidized employment: working for a qualified employer or legitimate self-employment. If a qualified employer has provided verification of the individual's hours per week of employment there is no need for them to also provide verification of a work schedule unless the worker finds the employment questionable.

The program definitions for "qualified employers" and "legitimate self-employment" are described below and reflect current Wisconsin Wage and Unemployment Insurance law:

1.5.3.1 Qualified Employers

All qualified employers must have a FEIN documented in the individual's CARES Worker Web record for the verification of the unsubsidized employment to be considered complete.

If the FEIN is already on file on the Employment Page or the worker knows the FEIN for the employer, the employer does not have to re-verify the number unless the worker believes that the FEIN is incorrect.

Incorrect FEINs are considered incomplete verification (See Section 1.3.4 Missing Verification for incomplete verification steps for new applicants, Program Adds, SMRFs and Reviews.

Children of parents who are employed by certified child care providers are not eligible for an authorization at the child care provider where their parent is employed.

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified. Please refer to the Appendix for suggested verification steps.

- The employer must have a Worker's Compensation insurance policy for its employees unless legally exempt.
- The employer must comply with Wisconsin minimum wage law for all employees.
- The employer must file a New Hire report on the employee within thirty days of the hiring date.
- The employer must report wages to Unemployment Insurance unless exempt.

The employers did not report wages to the Department of Workforce Development for employees in the overpayment test period; and the employers did not have worker's compensation insurance coverage in the test period. The employers were not qualified as that term is defined by the Wisconsin Shares Program, above, and thus the Department correctly determined that the petitioner was not in qualified employment in the test period and was overpaid Child Care benefits of \$2,323.75. That determination must be sustained and there is no exception under law for the circumstances the petitioner has described. Nor has she pointed to any.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$2,323.75 of Child Care benefits in the period of February 17 – August 31, 2013, because she was not eligible as she was not in qualified employment in that time period.

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 5th day of May, 2014

\sKenneth D. Duren, Assistant Administrator
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 May 5, 2014.

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