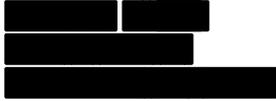




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/156326

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 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 30, 2014, at Milwaukee, Wisconsin. The record was held open for ten days to allow petitioner time to submit any wage/employment documentation supporting her claim of work during the specific overpayment period.

The issue for determination is whether the agency erred in determining a Child Care (CC) Program overpayment in the amount of \$1,733.42.

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: Glenetta Rucker

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

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. Petitioner was a recipient of CC benefits in 2013.
3. Petitioner was employed at a school ( [REDACTED] ) that was closed during the summer.
4. Petitioner did not work at the school between June 8, 2013 through August 31, 2013.
5. During that period, petitioner collected CC benefits.

### DISCUSSION

All childcare 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. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

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

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

The agency argued that petitioner was employed at a school and did not work during the summer. Therefore, during the summer, she was not engaged in an approved activity and any benefits during that period were overpaid.

Petitioner's only argument at the hearing was that the overpayment is error because she was actually working over the summer. Petitioner did not dispute that her primary employer closed during the summer. Petitioner claimed that she worked a different job at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] on an on-call basis. Petitioner requested additional time to submit documentation proving that employment and the hours worked. Petitioner did submit a fax of two pages on May 7, 2014 (ex. #2). The pages appear to be some sort of payroll record from [REDACTED] [REDACTED]. The first page only indicates some personal information about petitioner and an hourly wage of nine dollars an hour, and \$114.30 wages earned year-to-date. But that page does not reflect a date and does not reflect during what period that \$114.30 was earned. The second page of the fax reflects a check written for \$105.55 from the gross of \$114.30. But, it does not state when the check was written or when the wages were earned. I cannot tell if these

wages were earned in 2014, 2013, or fifteen years ago. Furthermore, they reflect only about 13 hours of work. This does not prove that petitioner worked at an approved activity over the course of three months. The documents submitted are not persuasive.

**CONCLUSIONS OF LAW**

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

**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 13th day of June, 2014

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\sJohn P. Tedesco  
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 June 13, 2014.

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