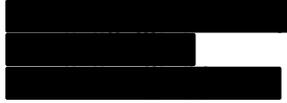




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



CCO/157096

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 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 June 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

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: Lareina 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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was sent child care overpayment notices, dated March 26 and 27, 2014. They both indicated that Petitioner had been overissued child care benefits in the amount of \$6990.68 during the period from April 7, 2013 to October 31, 2014 (claim # [redacted] 5). The agency subsequently

removed the month of September 2013 from the overpayment, reducing the overpayment by \$956.22 to \$6034.46.

3. Petitioner received the child care benefits involved here.
4. The agency alleged this overpayment as a result of client error – the failure of Petitioner to report changes in employment and income and because Petitioner used child care without being in an approved activity.
5. Petitioner was employed at a beauty salon; it closed - while Petitioner indicated it closed in July 2013, no wages were reported past the first quarter of 2013 (Jan/Feb/Mar). Petitioner did not report the end of employment until September 4, 2013 at which time she reported new employment. That employment was not ultimately verified.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *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 or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*.

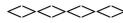
Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes the following:

1.4.8 Participation in Approved Activities

Every parent in the family/Assistance Group (AG) must need child care to participate in an approved activity or activities(s) (see Approved Activities Section).
Manual, §1.4.8.



1.5.3 Unsubsidized Employment

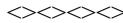
Work in an unsubsidized job, including training provided by an employer during the regular hours of employment. Subsidized employment is not considered an approved activity for Wisconsin Shares child care subsidy, including Transitional Jobs that are not a work experience as part of a FSET Employment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

...

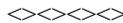
Manual, §1.5.3.



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.

Manual, §1.5.3.1.



1.15.2 Examples of Required Information to be Reported

Examples of some of the information that parents are required to report include:

- A change in the scheduled approved activity hours
- A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.
- A change in approved activity status (starting or ending an activity)
- A change in their Assistance Group composition.

Manual, §1.15.2.

In this case there is no evidence that documents that Petitioner was employed during the periods for which the agency seeks the overpayment. While Petitioner recalls that the salon she was working at closed in July 2013, there were no wages reported after the first quarter of 2013. Petitioner did allow that she continued to use the child care during some of this period while unemployed as she was looking for new employment. Petitioner did indicate that the new employment in September and October 2013 was an apprenticeship but did not submit any verification of that claim. As for apprenticeships, it is worth noting that:

1.5.3.3 Apprenticeships

Apprenticeships are considered allowable forms of unsubsidized employment if all of the following conditions are met:

- There is an apprenticeship contract signed by the applicant, employer, and Wisconsin Department of Workforce Development.
- The Wisconsin Shares child care assistance is allowable for classroom and employment time covered by the contract provided all other eligibility criteria is met.

Apprenticeship participants are required under current law to receive at least the minimum wage while participating in classroom and on-the-job training.

...

Manual, §1.5.3.3.

I do conclude that Petitioner was overissued child care benefits as alleged.

CONCLUSIONS OF LAW

That the evidence demonstrates that the agency correctly seeks recovery of an overpayment of child care as alleged because Petitioner was not in an approved activity during the periods of April through August 2013 and October 2013.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of September, 2014

\sDavid D. Fleming
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 September 3, 2014.

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