



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/157183

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 28, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration ["MECA"] in regard to Child Care ["CC"], a Hearing was held via telephone on May 21, 2014.

The issue for determination is whether a claim may be established against petitioner for an overpayment of Wisconsin Works ["W-2"] CC in the total amount of \$2,094.82 for the time period August 18, 2013 to September 30, 2013 (Claim Number # [REDACTED]).

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: LaReina Horton, Child Care Subsidy Specialist Senior  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**OTHER PERSON PRESENT:**

[REDACTED], petitioner's friend

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner was overpaid W-2 CC in the total amount of \$2,094.82 for the time period August 18, 2013 to September 30, 2013 (Claim Number # [REDACTED]).
3. Petitioner was employed at *Michaels Family Restaurant of West Allis Inc.* during the time period of the overpayment; petitioner used CC during the time period of the overpayment.
4. During the time period of the overpayment *Michaels Family Restaurant of West Allis* had a Worker's Compensation insurance policy for its employees but did not report employee wages as required.

### DISCUSSION

The County must determine whether an overpayment of W-2 CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2001-12); See also Wis. Admin. Code §§ DCF 101.23(2)(a) (May 2014) & 201.04(5)(a) (April 2014); *Child Care Assistance Manual* (2013) ["CC Manual"] 2.1.5.1.

A person is eligible for W-2 CC only if the person is participating in an approved activity. Wis. Stat § 49.155(1m)(a) (2011-12); Wis. Admin. Code § DCF 101.26(1) (May 2014); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (April 2014); CC Manual 1.5.0.

As outlined below (1.5.3.1), employment is an approved activity only if the employer is a qualified employer. In order for an employer to be a qualified employer the employer must have a Worker's Compensation insurance policy for its employees and must report employee wages as required. As noted in the above *Findings of Fact*, petitioner's employer had a Worker's Compensation insurance policy for its employees and but did not report employee wages as required. Petitioner does not dispute this. Therefore, her employer was not a qualified employer. It follows that petitioner was not in an approved activity during the time of the overpayment. For this reason, the overpayment must be affirmed.

#### **"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."

CC Manual 1.5.3.; *W-2 Manual* 15.2.0.; See also, Wis. Stat § 49.155(1m)(a) (2011-12); Wis. Admin. Code § DCF 101.26(1) (May 2014); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (April 2014); and, *BEPS/DFES/DECE Operations Memo* No: 13-29; Date: 09/06/2013.

Petitioner argues that when she did everything she could and the overpayment is not her fault. Petitioner is correct. The overpayment was due to non-client error. The employer did not comply with the law. However, even if the overpayment is not petitioner's fault it must still be repaid by her. Wis. Admin. Code § DCF 101.23(1)(g) (May 2014); See also, Wis. Admin. Code § DCF 201.04(5)(a)1. (April 2014). A CC overpayment is any CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (May 2014); CC Manual 2.1.5.1 & 2.1.5.2.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, a claim may be established against petitioner for an overpayment of W-2 CC in the total amount of \$2,094.82 for the time period August 18, 2013 to September 30, 2013 (Claim Number # [REDACTED]).

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby 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 30th day of June, 2014

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\sSean P. Maloney  
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 June 30, 2014.

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