



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/157598

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care (CC), a hearing was held on July 10, 2014, at Madison, Wisconsin. With the petitioner's consent, the hearing record was held open for seven days for further evaluation of the amount of the petitioner's overpayment by the agency.

The issue for determination is whether the petitioner was overpaid CC benefits of \$2,409.11 from January 19, 2014 through February 28, 2014.

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: Luisa McKy, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner's spouse was receiving CC benefits for her children from at least February 2013 through February 2014. In the latter half of 2013, she reported to the agency that [REDACTED], the parent of a child-in-common with the petitioner, had joined the household. The agency failed to add him to her CC assistance group, which was an agency error. His income caused the household to be ineligible for any amount of a CC benefit.
3. On April 17, 2014, the county agency issued a *CC Client Overpayment Notice* to the petitioner. The Notice advised that the petitioner had been overpaid CC benefits of \$2,409.11 for the January 19, 2014 through February 28, 2014, period. It further advised that the household was ineligible for CC during the period due to excess income.
4. The overpayment is the total of a \$1,238.55 overpayment for January 2014, and \$1,170.56 for two weeks in February 2014. The petitioner questioned the arithmetic used to arrive at these numbers. The agency has not met its burden of establishing the correctness of the February amount. Exhibit B1 shows February payments of \$156.83 & \$156.83 for the child Au, \$175.78 & \$175.78 for the child Al, and \$202.14 & \$202.14 for the child AS. These amounts total \$1,069.50.
5. Two of the household's children attended [REDACTED] during the period, and there is no issue regarding Young Star enhancements for benefits paid to that provider.
6. The youngest child in the household, AS, attended [REDACTED]. [REDACTED] was a "three star" center under the Young Star program in 2013. Effective January 2014, [REDACTED] became a "five star" center under the Young Star rating program. As a result of its elevation to five star status, the CC reimbursement to [REDACTED] was enhanced. The enhancement margin amount for AS totaled \$214.06 for the January 19– February 15, 2014, period. The weekly CC program payment was enhanced by \$56.50 weekly in January and \$50.53 in February. *See*, Exhibit A5.

DISCUSSION

I. JURISDICTION.

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). Prior to January 1, 2004, 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, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. Seq., Child Care Manual, § 2.1.5.*

II. THE PETITIONER MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The petitioner noted that his wife reported his presence (he has eligibility-ending income) in her household to the agency in 2013, and that the overpayment was not their fault. However, the applicable overpayment rule requires recovery of the overpayment, regardless of fault:

DCF 101.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

...

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital coparent, or stepparent whose family receives benefits under s.49.148, 49.155, 49.157 or 49.19, Stats., during the period that he or she is an adult member of the same household, ...

Wis. Admin. Code §DCF 101.23(1)(g), (3)(a). See in accord, *Child Day Care Manual*, §2.1.5. Child Care benefits are paid out pursuant to Wis. Stat. § 49.155. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

The petitioner understands this “strict liability” rule, and at hearing contested a specific portion of the overpayment calculation, as well as the agency’s arithmetic.

III. TREATMENT OF “YOUNG STAR” SUPPLEMENTS IN THE OVERPAYMENT CALCULATION.

The petitioner objects to the inclusion of the 2014 Young Star five-star level supplements in the total of the couple’s overpayment liability. They note that the state’s five-star reimbursement rate plus the parental co-pay is more than the \$270 weekly rate that they would have been required to pay the day care as private pay parents. From their perspective, the five-star supplement is a reward to the daycare that should not be collected from parents.

There is no authority that specifically discusses Young Star payments in the context of overpayment recovery. The general language on CC overpayment recovery against parents in state code is as follows:

(5) OVERPAYMENT RECOVERY AND PENALTIES.

(a) Parent overpayments.

1. A child care administrative agency or the department shall take all reasonable steps necessary to recover from a parent *funds paid to a child care provider* ... when the parent was not eligible for that level of child care benefit *and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay* **under child care assistance program requirements**, regardless of whether the overpayment was the result of administrative error, client error, or intentional program violation. Section **DCF 101.23** shall apply to overpayment collection from a parent under this section.

2. An overpayment shall include excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the following:

a. The parent failed to report a change in circumstances that may affect his or her eligibility within 10 days after the change.

b. The parent was absent from an approved activity under s. 49.155 (1m) (a), Stats., without good cause, while the child was in the care of the provider.

3. The child care worker shall determine good cause under subd. 2. b. if the approved activity is unsubsidized employment. A parent's absence from unsubsidized employment shall be considered good cause if the parent is using employer-approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

[emphasis added]

Wis. Admin. Code § DCF 201.04(5).

The code language leads me to the conclusion that the agency correctly included the five-star supplement amounts in the petitioner's overpayment liability total. The petitioner was not eligible for any level/amount of the child care benefits. Applying the code language, the parent benefited from the overpayment by causing the parent to pay less than s/he would have been required to pay "*under child care assistance program requirements.*" The test is whether the parent paid less than s/he should have as compared to the CC program rules, not whether the parent paid less than free market rate. Also, the first sentence of (5)(a)1 above says that the department shall recover "funds paid to a child care provider." There is no carve-out for Young Star supplements. Similarly, the even more generic provision at § DCF 101.23(1)(g) above says that an "overpayment" is "*any benefit or payment received under ...49.155... in an amount greater than the amount that the individual ... was eligible to receive ... regardless of the reason for the overpayment.*" Again, the code embraces the entirety of the overpayment, without exception. The code could have cross-referenced the defined term "child care price" (the amount charged to a parent paying for CC out of personal funds) from § DCF 201.02(5), into the overpayment provisions, but it did not do so. The Department could certainly decide to amend the code to eliminate a five-star supplement from the overpayment in an "agency error" case in the future, in the interest of fairness. However, that is not how the code reads at this time. The code has the force of law, and I must follow it.

CONCLUSIONS OF LAW

1. The Department correctly determined that the provider payment increment for a five star Young Star award is included in the amount of the petitioner's CC overpayment.
2. The agency failed to meet its burden of establishing that the overpayment amount for February 2014 was \$1,170.55. Submitted documentation supports a February 2014 overpayment amount of \$1,069.50. The total overpayment must therefore be reduced by \$101.05 (\$1,170.55 - \$1,069.50).

THEREFORE, it is

ORDERED

That the petition is *remanded* to the county agency with instructions to reduce the CC overpayment by \$101.05, for a remaining total of \$2,308.06 (\$2,409.11 - \$101.05). This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 19th day of November, 2014

\sNancy J. Gagnon
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 November 19, 2014.

Dane County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud