



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/158310

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on July 21, 2014, at Oshkosh, Wisconsin.

The issue for determination is whether the agency erred in its denial of Child Care (CC) Program benefits for the month of May 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: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County.
2. Petitioner was receiving CC benefits earlier in 2014.

3. The agency denied CC benefits for the month of May 2014 based on the county's determination that petitioner was not engaged in approved CC activities.
4. On April 21, 2014, petitioner submitted a letter from [REDACTED] [REDACTED] stating that petitioner was employed by [REDACTED]. See ex. #1.
5. In May 2014, the agency received an employer verification dated May 28, 2014. The verification form was signed by [REDACTED] [REDACTED] and indicated that petitioner was never employed by her. See ex. #1.
6. The agency sought additional verification from petitioner. None was provided. The agency denied May benefits.
7. Petitioner appealed.

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.

In this case, the agency acted reasonably to verify the participation in an approved activity – in this case, employment. The agency had received the signed employer verification form stating that petitioner had never worked for the employer. Petitioner failed to provide any follow-up verification of explanation form the purported employer. The agency representative explained to petitioner that any documentation showing employment in May would be adequate. Petitioner testified at hearing that she would not be able to provide this documentation.

CONCLUSIONS OF LAW

The agency did not err in denying CC for May 2014.

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 16th day of September, 2014

\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 September 16, 2014.

Winnebago County Department of Human Services
Child Care Benefits