



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/158331

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on July 08, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the 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: Karen Mayer Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.
2. On May 27, 2014, the agency sent the Petitioner a manual Child Care (CC) Client Overpayment Notice, claim number  indicating that she was overpaid Child Care benefits in the amount of \$647.27 for the period of September 8, 2013 to December 31, 2013. The notice further

indicated that the overpayment was caused by the Petitioner's failure to report a change in the number of hours she was working/engaging in an approved activity. (Exhibit 4)

3. On June 3, 2014 the agency sent the Petitioner a repayment agreement. (Exhibit 6)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and appeals on June 12, 2014. (Exhibit 1)

DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. Wis. Stat. § 49.195(3) An overpayment occurs when an individual receives more childcare benefits that he or she was entitled to receive. Wis. Admin. Code §DCF 201.04(5)(a) The county agency / Department of Children and Families must determine whether an overpayment has occurred; it must notify the recipient, and it must give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Wisconsin Shares Child Care Manual (CCM)*, §§2.1.5.2 and 2.1.5.3 See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *CCM* §2.1.5.2. 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/pdf>.

In the case at hand, the agency asserts that the Petitioner received more child care benefits than she was entitled to between September 8, 2013 and December 31, 2013, because her children were in daycare the weeks beginning September 22, 2013 and September 29, 2013, when Petitioner was not working.

A parent/caregiver is eligible for child care services only if he/she needs child care to participate in an "approved activity". *CCM*, §§ 1.5.0, *et al.*, & 1.4.8.

For the week of 9/22/2013 through 9/28/2013, Petitioner's employer has no record of the Petitioner working. (Exhibit 7) The Daily Attendance Record from Petitioner's daycare provider shows that her son was in daycare for approximately 27 hours that week; and her daughter was in daycare for about 7.5 hours. (Exhibit 8)

For the week of 9/29/2013 through 10/05/13, Petitioner's employer has no record of the Petitioner working. (Exhibit 7) The Daily Attendance Record shows that Petitioner's son was in daycare for 32 hours that week and that her daughter was in daycare for 10 hours that week. (Exhibit 8)

The overpayment worksheet indicates that the overpayment period covers these two weeks only. (Exhibit 5)

Wis. Admin. Code §DCF 201.04(2g)(h) states:

The child care administrative agency may authorize payment to a licensed or certified provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.

In other words, a child care administrative agency may authorize payment for child care during a temporary break in employment for reasons other than medical reasons when:

- 1) The parent intends to return to work
- 2) The parent intends to continue to use the childcare provider upon return to work, AND
- 3) The leave is no more than 4 weeks.

In the case at hand,

- 1) It is clear that the Petitioner intended to return to work, since her employer's records show that she was back to work the week of October 6, 2013 through October 12, 2014. (Exhibit 7)
- 2) There is no evidence that the Petitioner stopped using the same day care provider.
- 3) The Petitioner's absence from work appears to have been less than three weeks, as she returned to work the week beginning October 6, 2013 and ending October 12, 2013. (Exhibit 7)

Based upon the language in Wis. Admin. Code §DCF 201.04(2g)(h), it is found that the agency correctly authorized payment to the daycare provider during the time in question.

This is consistent with a decision issued by the Assistant Deputy Secretary for the Department of Children and Families in case CCO/153372.

It should be that *Child Care Manual*, §3.11.1 discusses situations in which there is a break in employment for children, like Petitioner's, whose authorizations are enrollment based. (Enrollment based means that the daycare provider is paid for a week of childcare, regardless of whether a child actually attends daycare.) *Please see Exhibit 8, which indicates enrollment based authorizations.*

“Child care administrative agencies may authorize payment to a child care provider to hold a slot for a child, if the parent has a temporary break in employment and intends to return to work and continue to use the same child care provider upon return to work.” *Child Care Manual*, §3.11.1

According to *Child Care Manual*, §3.11.2, certain conditions must exist, however, in order for the Wisconsin Shares program to pay a provider to hold a slot:

1. The authorization must be enrollment based.
2. The parent must be receiving Shares (child care) benefits and must be employed before going on leave.
3. The parent must intend to return to the same employer, and must, in fact return to the same employer when his/her leave ends.

Child Care Manual, §3.11.2

As discussed above, Petitioner meets these criteria.

CONCLUSIONS OF LAW

1. The agency correctly authorized payment for childcare between September 22, 2013 and October 5, 2013.
2. No overpayment of benefits occurred.

THEREFORE, it is

ORDERED

That the agency rescind claim # [REDACTED] and that it cease collection efforts. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

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 17th day of September, 2014.

\sMayumi M. Ishii
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 17, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud