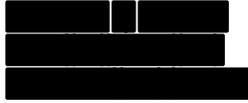




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/159504

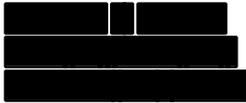
**PRELIMINARY RECITALS**

Pursuant to a petition filed August 2, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on August 19, 2014, by telephone.

The issue for determination is whether petitioner was overpaid child care benefits because the agency erred in determining the assistance group.

**PARTIES IN INTEREST:**

Petitioner:



;

Respondent:

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

By: Destiny Cooper  
Milwaukee Early Care Administration  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. In the spring, 2014, petitioner's household consisted of her 18-year-old son S.C., two younger sons including S.S., an unrelated 18-year-old boy E.G., S.C.'s girlfriend S.A., and S.C. and S.A.'s infant child C.J.

3. Petitioner received child care for her son S.S. The child care household included six of the seven people in the actual household. Only S.C. was excluded because he was an 18-year-old attending college.
4. The agency discovered an error in the child care household composition. S.A. and C.J. should not have been included. They should have been separated out with S.C. because S.C. is C.J.'s father.
5. When the agency discovered the error it re-determined child care eligibility back to March, 2014. Since the household should have been four persons (petitioner, her two minor children, and E.G.), the agency compared petitioner's gross monthly income against the limit for a four-person household. Petitioner's actual monthly income was above the limit in every month except April.
6. By a notice dated July 28, 2014, the agency informed petitioner that she was overpaid \$1,694 in child care assistance in March, May, and June, 2014, claim no. [REDACTED]. The claim was for all child care paid during those months.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

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 Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the 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. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency must utilize monthly gross income, and for an ongoing case, the income limit is 200% of the federal poverty limit. Wisconsin Shares Child Care Assistance Manual, Chapter 1, §§1.6.3 and 1.6.4. 200% of poverty for a three-person household is \$3,298. DECE/DFES Operations Memo no. 14-05, dated February 21, 2014. The limit for a six-person household is \$5,328; the limit for a four-person household is \$3,975.

The Child Care Assistance Manual, Chapter 1, §1.3.9 deals specifically with the situation in petitioner's household. When an adult child is in the household with his parent, he must be considered a separate child care unit from the parent unless the parent has legal guardianship. The example closest to the situation in this case is found on page 28 of the Manual: "A grandmother, an adult mother, and the adult mother's baby live in the same house. The AG [assistance group] consists of the adult mother and her baby. The grandmother is not in the AG unless the grandparent has guardianship of both the adult mother and her dependent child." In this case it is the grandmother and both adult mother and adult father, but the result is the same. The parents are in a separate child care household from the grandmother.

S.C. and S.A. could not be part of petitioner's child care assistance group because they are adults for whom petitioner does not have guardianship. C.J. could not be in petitioner's assistance group because he had to be in his parents' group.

As noted, in determining the overpayment the agency used petitioner's actual income from the months in question. In three of the four months her income was over \$3,975.

Petitioner testified that she would not have utilized child care if she had been told she was ineligible. Of course, the same can be said in any situation where the overpayment is caused by agency error. The legislature has determined that all child care overpayments must be recovered even when caused by agency error. I must conclude, therefore, that the claim was determined correctly.

### CONCLUSIONS OF LAW

The agency correctly determined a child care overpayment caused by agency error in determining the correct assistance group.

**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 25th day of August, 2014

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\sBrian C. Schneider  
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 August 25, 2014.

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