FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
[redacted]
CCO/159583

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the [redacted] County Department of Social Services in regard to Child Care, a telephonic hearing was held on September 23, 2014, at Wausau, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a $5,014.15 child care overpayment from the period of November 3, 2013 to June 21, 2014, due to petitioner's failure to timely report the father of one of her child in the home and that he was not employed nor participating in any approved W-2 child care activities.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Maikou Yang, ESS
[redacted] County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of [redacted] County who resided with her two children.
2. The petitioner's boyfriend is [redacted] who is the father of one of petitioner's children, DR.

3. The petitioner failed in her December, 2013 child care review application and June 4, 2014 six month report form (SMRF) to timely report to the county agency that [redacted] has been residing in her household since September, 2013. See Exhibit 2.

4. During the hearing, petitioner admitted that [redacted] has been unemployed for the period of November, 2013 through June 21, 2014.

5. Mr. [redacted] was not participating in an approved W-2 activity or educational program during the period of November, 2013 through June 21, 2014.

6. In the petitioner's July 1, 2014 [redacted] County Circuit Court Order in Case No. [redacted], Court Commissioner Marcus concluded in part that [redacted] has been residing in the petitioner's home since September, 2013. See Exhibit 6.

7. On July 1, 2014 after the court hearing, petitioner for the first time reported to the county agency that [redacted] was residing in her home.

8. The county agency sent a July 7, 2014 Child Care Overpayment Notice to the petitioner stating that petitioner received a $5,014.15 overpayment during the period of November 3, 2013 to June 21, 2014, due to her failure to report accurate household composition, as the father ([redacted]) has been residing in her home since September, 2013. See Exhibit 1.

9. The county agency documented how the $5,014 child care overpayment was correctly calculated. See Exhibits 4 and 1.

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 (the responsible agency at the time) changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq*.

II. A RECIPIENT MUST REPAY A CHILDCARE (CC) OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy is available online at http://dcf.wisconsin.gov/childcare/wishares/manual.htm.

III. AN OVERPAYMENT OCCURRED, DUE TO PETITIONER'S FAILURE TO TIMELY REPORT THE FATHER OF ONE OF HER CHILDREN IN HER HOME and THAT THE FATHER WAS AN UNEMPLOYED PARENT IN THE HOUSEHOLD.

During the September 23, 2014 hearing, the county agency representative, ESS Maikou Yang, presented the county agency's case (with additional agency witnesses), and established that it is correctly seeking repayment of a child care overpayment to the petitioner in the total amount $5,014.15 for petitioner's two children during the period of November 3, 2013 to June 21, 2014, due to her failure to report to the county agency that the father of one of her children ([redacted]) was residing in her home and the

father was not employed nor participating in an approved W-2 child care activity. Petitioner's failure to report those facts to the county agency violated Child Care Manual §1.15.2. The petitioner was unable to refute the county agency's case. The petitioner alleged vaguely that Mr. [redacted] was at times residing outside of her home during some of the overpayment period, but was unable to establish any other lease, rental agreement, or permanent address for Mr. [redacted] during the overpayment period. Moreover, by the end of the hearing, petitioner admitted that [redacted] [redacted] was not employed or participating in W2 activities during the entire CC overpayment period.

When two adults and their minor child-in-common reside together, regulations require that they be treated as one CC household. *Manual*,§1.2.0, "Family" definition. The county agency established substantial reliable evidence that Mr. [redacted] resided in the petitioner home throughout the overpayment period.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the eligibility criteria, then CC cannot be granted. The agency asserts that the unemployed father's presence in the home made CC benefits unnecessary. Free child care could have been provided by the unemployed parent. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

> (**1m**) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 …if the individual meets all of the following conditions:
>
> (a) The individual is a parent of a child who is under the age of 13 …and *child care services for that child are needed in order for the individual to do any of the following*:
>
> 1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
>
> 1m. Obtain a high school diploma …
>
> *2. Work in an unsubsidized job ...*
>
> *3.* Work in a Wisconsin works employment position ...
>
> 3m. Participate in a job search or work experience component of the food stamp … program.
>
> 4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education … An individual may receive aid under this subdivision for up to 2 years.
>
> 5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.
>
> [*emphasis added*]

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8.

Based on the above hearing record, I conclude that the county agency is correctly seeking repayment of a child care overpayment to the petitioner in regard to the child care benefits paid on behalf of petitioner's two children because Mr. [redacted] resided with the petitioner, and has a child in common with her.

The Child Day Care Manual defines child care family or family group to include any non-marital co-parent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or non-marital parent is a custodial parent. Furthermore, the child care manual provides that: "In two parent families both parents in the AG including step parents and non-marital co-parents must be participating in approved activities. . ." *Child Day Care Manual*, §1.4.8.2.

IV. THE AUTHORITY TO ADMINISTRATIVELY RECOVER CHILDCARE OVERPAYMENTS

It makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must generally be recovered even if it was caused by agency error.

This is also reflected in the applicable overpayment rule, Wisconsin Administrative Code §12.23(1)(g), (3)(a), which states in pertinent part:

> **DWD 12.23 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.
> …
> (**2**) OVERPAYMENT DETERMINATION AND NOTICE. (a) A county … shall determine whether an overpayment has been made under s.49.148, 49.155, 49.157, or 49.19, Stats., and if so, the amount of the overpayment. …
>
> (**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, but his or her liability is limited to such period. …

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.

The Child Care Manual states there are 3 types of overpayments:

> **2.3.1 Client Overpayments**
> Agencies administering child care shall take all steps necessary to recoup or recover, from the parent, funds paid to the child care provider when the parent was not eligible for the level of benefits paid.
> There are 3 types of overpayments:
>
> 1. **Client/Provider Error**. **The client or provider report incorrect information or fail to report information. Intentional Program Violation is not established.**
>
> 2. Administrative Error. Overpayment results from agency or system error. The agency commits an error or the system calculates an authorization or payment

amount for more than the client was entitled. Can only recover 12 months prior to discovery of the overpayment. The original Overpayment Notice date is the date of discovery.

3. **Intentional Program Violation**. The client or provider willfully reports information or fail to report information in order to receive more benefits, and as a result is found guilty of IPV by the court, ...

(Emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that [redacted] was part of the petitioner's child care unit, and that he was not employed nor participating in any approved W-2 child care activity during the overpayment period.

V. JOINT AND SEVERAL LIABILITY.

When two adults and their minor child-in-common reside together, regulations require that they be treated as one Child Care (CC) household. *Manual*,§1.2.0, "Family" definition. In cases where an overpayment of Child Care Benefits may have occurred, the county agency is required to determine whether or not an overpayment has been made and to recover the overpayment from the household that received it, *Wis. Admin. Code* §DWD 12.23(2)(a). Liability for repayment is joint and several as to any parent or **non-marital co-parent** for the time that he or she is living in the household, *Wis. Admin. Code* §DWD 12.23(3). The agency is required to recover overpayments whether they are the result of client error, administrative error or intentional program violation, *Wis. Admin. Code* §DWD 12.23(1)(g). Mr. [redacted] is a non-marital co-parent of the two children with the petitioner. Therefore, the liability for the child care overpayment which benefited more than one person is **joint and several liability**, meaning that petitioner and Mr. [redacted] are both liable for the full amount, *Wis. Admin. Code* §DWD 12.23 (3)(b) and *Wis. Admin. Code* §DWD 12.23(3)(a).

During the September 23, 2014 hearing, the county agency clearly established with its witnesses and exhibits that the petitioner received Child Care overpayments. During the hearing, the petitioner testified with explanations and allegations for why she contended [redacted] did not live with her during the overpayment periods in question. However, her testimony was not credible. Of particular importance was that in the petitioner's July 1, 2014 [redacted] County Circuit Court Order in Case No. [redacted] Court Commissioner Marcus concluded in part that [redacted] has been residing in the petitioner's home since September, 2013. See Exhibit 6.

During the September 23, 2014 hearing, petitioner was unable to present any reliable evidence to refute or undermine in any way the county's substantial, reliable testimony or evidence that [redacted] resided with the petitioner and petitioner's children during the entire CC overpayment period. The petitioner did not contest that her household had received CC benefits during the period of November 3, 2013 through June 21, 2014. Furthermore, the petitioner was unable to offer any reliable evidence to refute the accuracy of the county agency's CC overpayment determinations. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the CC overpayment. However, controlling federal regulation requires establishment of a claim against a household for a CC overpayment regardless of whose error caused the overpayment to occur. Accordingly, based upon the above, I conclude that the county agency is correctly seeking recovery of a $5,014.15 child care overpayment from the period of November 3, 2013 to June 21, 2014, due to petitioner's failure to timely report the father of one of her child in the home and that he was not employed nor participating in any approved W-2 child care activities.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a $5,014.15 child care overpayment from the period of November 3, 2013 to June 21, 2014, due to petitioner's failure to timely report the father of one of her child in the home and that he was not employed nor participating in any approved W-2 child care activities.

THEREFORE, it is **ORDERED**

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 1st day of December, 2014

_____

\sGary M. Wolkstein
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 December 1, 2014.

[redacted] County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud
Attorney Nancy Wettersten