



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/159670

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 5, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, hearings were held on September 3 and September 16, 2014, by telephone.

The issue for determination is whether the agency correctly determined child care overpayments.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Keisha Love  
Milwaukee Early Care Administration  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care assistance in 2013 and 2014. In 2013 her scheduled activities were a part-time job and also ten hours per week employment search. In July she used hours above the amount needed for the part-time job, but she was sanctioned for failing to do her employment search. The agency found that child care utilized above what was necessary for the job was an overpayment, in the amount of \$66.30.

3. In September, 2013, the hours of petitioner's part-time job were reduced from 22 hours to 10 or 11 hours per week, but petitioner continued to take her daughter to child care 30-35 hours per week. The agency determined that petitioner was overpaid \$185.64 in child care for the hours in care beyond her actual work and employment search hours. See Page 77 of the agency's exhibit.
4. By a notice dated July 24, 2014, the agency informed petitioner that she was overpaid \$251.94 in child care assistance in July and September, 2013, claim no. [REDACTED].
5. In 2014 petitioner was authorized for 40 hours per week child care on an attendance based schedule for January, and then 33 hours per week for February through May, all for employment at a [REDACTED]. The agency discovered later that petitioner actually worked substantially less hours during the time period. It obtained petitioner's employment records and re-determined the child care that should have been authorized had petitioner reported the reduced work hours.
6. The agency determined that for January, 2014 petitioner would have been authorized only 12 hours based upon her actual work hours. For February and March, the authorization would have been 15 hours. For April it would have been 17 hours, and for May it would have been 21 hours. See pages 65-69 of the agency's exhibit; the agency calculated hours worked by using the employer's payroll history found age pages 31-32 of the exhibit.
7. Based upon the reduced hours, the agency determined that petitioner was overpaid \$1,303.60 in child care by comparing the hours that should have been authorized based on actual work hours to the hours that petitioner utilized child care services. See page 76 of the agency's exhibit.
8. By a second notice dated July 24, 2014, the agency informed petitioner of the \$1,303.60 overpayment, claim no. [REDACTED].

### 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 shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

This hearing initially was convened on September 3, 2014. Only petitioner appeared, and she testified that she only took her daughter to child care when she was working. Ms. Love contacted me after the hearing and explained that she was unexpectedly detained, and I agreed to reschedule the hearing. At the second hearing on September 16 Ms. Love explained in detail how the overpayment was determined and how it

was calculated. At that hearing petitioner admitted that she took her daughter to the child care center during periods she was not working because a child care employee told her that it was okay to do so.

As noted above, the agency must recover child care payments if the authorized payments would have been less due to absence from the approved activity. In July, 2013 petitioner did not do her employment search, and thus she was ineligible for child care for any hours granted for employment search. In September, 2013, her work hours were reduced and petitioner did not report the reduction. She thus was overpaid child care for the missing work hours. Similarly, in 2014 petitioner was authorized for 40, and then 33 hours per week employment, but her employment hours were reduced substantially without petitioner reporting the reduction. Again, any child care utilized beyond her actual work hours must be considered an overpayment. I note that in the re-determination Ms. Love found that petitioner should have been authorized for 15 hours per week in February and March, but that actually is a maximum amount. In several weeks during those months petitioner did not work even that many hours.

I conclude, therefore, that the claims were determined correctly.

### CONCLUSIONS OF LAW

Petitioner was overpaid child care assistance because she utilized child care for more hours than she was eligible based upon reduced work hours that were not reported and for failing to do required W-2 activities.

**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 23rd day of September, 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 September 23, 2014.

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