



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/159725

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 08, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Marathon County Department of Social Services in regard to Child Care, a hearing was held on September 29, 2014, at Wausau, Wisconsin.

The issue for determination is whether the agency erred in its determination of a child care program (CC) overpayment in the amount of \$9,096.

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: Mai Kou Yang

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner has 4 children with [REDACTED].
3. [REDACTED] was never reported as living in the home with petitioner who received CC benefits.

4. The agency conducted an investigation by [REDACTED] investigators who concluded that [REDACTED] lives in the home with the family and has for the entire overpayment period.
5. On or around 7/31/14 the agency sent a CC overpayment notice to petitioner indicating four separate claims totaling \$9,096 between 7/1/11 and 6/31/14.

### DISCUSSION

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 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, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0.

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. Adm. 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. Adm. Code, §DCF 101.23(1)(g).

It makes no difference as to whether an 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 be recovered even if it was caused by agency error.

The Child Care Benefits program requires the use of the prospective budgeting test, which usually treats income by a multiplier to reflect estimated income for an average month that is 4.3 weeks long. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.6. However, when income fluctuates, an average is to be used to arrive at monthly income. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.7. The average to be used is not limited to one month under this policy. *Ibid.* In addition, all earned income including overtime pay is included in determining child care income eligibility.

The income limit for an ongoing case is 200% of the federal poverty level ("FPL"). The income limit for a new request case is 185% of the federal poverty level. Financial eligibility ends when a household exceeds this limit for two consecutive months. *Ibid.*, § 1.6.3. In 2013, 200% of the FPL was \$3,842.00 for a four person household. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.3.

The Department's position was that the income exceeded the amount budgeted during the overpayment periods because the agency did not budget income from [REDACTED]. Now that the agency has determined that [REDACTED] was actually living in the home, it has applied his income to the household and determined the difference between what benefits were granted and what benefits should have been granted or what co-pays should have been paid but were not. This is set forth in the overpayment worksheets and exhibit #2.

The agency's proof upon which it relies is the investigation by [REDACTED]. The investigator spoke with a neighbor who stated that a man has lived at the home for a few years. Another neighbor stated that they have all lived there for over two years. When the investigator approached the home on July 21, 2014, it was [REDACTED] who opened the door and explained that he took the day off. [REDACTED] explained to the investigator that he spends 3 to 4 nights a week at the home but considers another address with his mother his "residence." Another neighbor said he sees [REDACTED] around the home on a regular basis.

It is notable that at hearing, petitioner explained that she now lives with [REDACTED] in his mother's home. I find it reasonable to conclude that [REDACTED] was contributing to the financial efforts of the family previously, though no income was budgeted from him. On the same day the investigator visited to home and conducted interviews, petitioner contacted the Community Development Authority which manages the property and reported [REDACTED] as residing in the home. I find this highly suspicious that on the same day [REDACTED] explained to the investigator that he lives with his mother the petitioner reports that [REDACTED] lives in the family home. With the fact that [REDACTED] also answered the door and the corroboration of the neighbor's observations I find the agency's conclusion to be persuasive and correct. [REDACTED]'s concession that he spends the days at the home and 3 to 4 nights a week alone would be sufficient to find residence and would support the finding of overpayment.

### CONCLUSIONS OF LAW

The agency did not err in its determination of FS overissuance claims [REDACTED], [REDACTED], [REDACTED], and [REDACTED] totalling \$9,096.

**THEREFORE, it is**

**ORDERED**

That this matter 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 31st day of October, 2014

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\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 October 31, 2014.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Child Care Fraud