



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/159862

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on September 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to prove the claimed overpayments in claim # [REDACTED] (\$680), and # [REDACTED] (\$1,007.20).

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: Keisha Love

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was enrolled in the child care (CC) program as a household of 2.
3. Petitioner was employed at [REDACTED] from August 20, 2012 until 3/19/14.

4. The state wage record indicates wage income for petitioner in the amount of \$8,409.65 for the 4<sup>th</sup> quarter of 2013.
5. ██████ provided employer earnings verification to the agency indicating October 2014 wages of \$3,637.75. The employer wages reflected on the report for October-December 2013 matches the report of the state wage record.
6. With a gross income of \$3,637.35, petitioner would not have eligible for the CC program which had a gross income limit of \$2,585.
7. Petitioner's child is in common with ██████. ██████ was living in the home between March and May 2014. Petitioner did not report him in the household. ██████ is a resident listed on the lease of the rental home since April 2011. He has his car registered at the address as well.
8. The state wage record indicates income for petitioner in the first quarter of 2014 at \$6,784.80 and in the second quarter at \$6,051.81.
9. The state wage record indicates income for ██████ in the first quarter of 2014 at \$6,149.23 and in the second quarter at \$5,308.90. The household exceeded the CC eligibility threshold for the months of the overpayment period.
10. On 7/30/14 the agency sent overpayment notices to petitioner indicating overpayment from 10/6/13 to 10/31/13 in the amount of \$680, and from 3/30/14 to 5/31/14 in the amount of 1,007.24.
11. Petitioner filed a timely appeal from the overpayment notices.

### 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 for a two-person household was \$2,586. In 2014, 200% of the FPL was \$3,300.00 for a three person household. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.3.

Petitioner disputes the accuracy of the state wage record and the employer’s handwritten verification. I find that the two corroborate one another as they reflect the same amounts. Petitioner did not provide any evidence other than her surprise that the reports were that high. I provided petitioner with 10 additional days post-hearing to provide pay stubs or documentation that could rebut the income information provided by the state wage record and the employer verification. Nothing was received.

Petitioner also argued that she was being punished even though she did everything that was expected of her. I note that this is an overpayment case and does not revolve around intent. If petitioner received more benefits that she was entitled to receive they must be recouped regardless of fault or blame or intent.

Petitioner also disputed that [REDACTED] lived with her. She explained that he applied for medical assistance benefits and used her address as his residence. He was thereafter placed on her CC case. She explained that she does not know where he actually lives though she conceded that she saw him the day before the hearing and sees him every day. She explained that he eats with the family and sometimes sleeps in the home. The record shows that [REDACTED] has a vehicle registered at the same home. The landlord of the home also reported that [REDACTED] is listed on the lease as a resident with petitioner and the child as of April 2011.

The record supports the determination that petitioner exceeded these threshold during the respective period by quite a bit. She was ineligible for any of the CC that was paid during those times.

### CONCLUSIONS OF LAW

The agency did not err in its determination of the overpayments.

**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 5th day of November, 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 November 5, 2014.

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