



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/160387

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 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 October 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for a child care program (CC) overpayment.

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: Nancy Wettersten

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 a member of the child care (CC program in September and October 2013.
3. At the time, petitioner was working two jobs and earned income from both jobs.

4. In September 2013, petitioner's gross wage income exceeded \$2,585.
5. On August 27, 2014, the agency sent two overpayment notices to petitioner informing her of overpayment from 9/1/13 to 10/31/13 in the amount of \$732.40, and another from 1/5/14 to 3/31/14 in the amount of 120.62.
6. Petitioner appealed.

### DISCUSSION

**Prior to the issuance of this decision, the Department filed a letter with DHA informing this ALJ that the claim of \$120.62 for the period from January through March 2014 had been withdrawn and will no longer be sought in recoupment. I therefore do not address it in the decision. The remaining claim relates to income exceeding 200% of FPL and involves the claim of \$732.40.**

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 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 \$2,585.00 for a two person household. *Wisconsin Shares Child Care Assistance Manual*, § 1.6.3.

This matter is now premised on only a claim for the period from September and October of 2013. The amount sought is \$732.42. The agency claims that petitioner was over income based on her wages reflected on employer verifications and state wage records. Initially, at hearing, the documentation did

not correlate to the assertions of the agency. First, the state wage record shows only reported income by quarter, not by month. This is a claim involving one month from Q3 and one month from Q4. Simply dividing the state wage record reported quarterly amount by three does not necessarily accurately give a monthly income for either month of the overpayment period as the income in the other months of the quarter may have been much higher. The amounts shown on the employer verification also do not jibe with the state wage record on first glance. The representative was unable to explain the agency's determination of income.

Petitioner, on cross-examination of the Department counsel, conceded at hearing that her income in September and October 2013 came from jobs at [REDACTED] and [REDACTED]. She explained that her hours were regular and that the monthly amounts paid were likely one third of the quarterly wages reported. Petitioner also conceded that the wage record amounts were likely accurate.

The wage record indicated a 3Q wage total from one of the jobs at \$7,764.27 and from the other job at \$1,476. This totals \$9,240.27, one third of which is \$3,080.09. I note that the employer verification from the [REDACTED] job provides two wage payments in September totaling \$2,241.02. This is in conflict with the state wage record and the theory of dividing a Q3 income by three to reach the monthly income. The wage record income under that practice would suggest a September income from [REDACTED] of \$2,588. It remains unclear to me how the agency concluded that her income was \$3,193.20 as set forth on the overpayment worksheet. But, even given some lack of clarity of the precise amount, the only reasonable conclusion based on the record, including petitioner's own testimony is that her monthly income for September exceeded the gross income limit for the CC program.

As for the month of October, the state wage record indicates a Q4 income from one of the jobs \$6,824.41 and the other at \$952. This totaled \$7,776.41 which leads to a monthly income when divided by 3 of \$2,592.14. Given that the monthly gross income limit for eligibility was \$2,585. The wage record places her only 7 dollars over the threshold and could easily be varied by that amount if her income in November and December were slightly higher than October. Petitioner's testimony indicates her belief that she generally worked the same hours and was paid a consistent amount. But, this testimony is not sufficient to rely upon when a mere 7 dollars one way or another is the issue. The Department could have obtained more detailed employer verification. This would be a wise practice when otherwise relying on a state wage record where wages from a month or two must be discerned from a quarterly report. I am not persuaded that petitioner exceeded the threshold for the month of October.

### CONCLUSIONS OF LAW

Petitioner was over the 200% FPL limit for the month of September 2013 but not October 2013.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department with instructions to reverse the finding of overpayment in the amount of \$172.40 for the month of October 2013. It must cease collection efforts of this amount. The September overpayment finding of \$560 may stand and may be recouped. The Department shall also reverse the finding of overpayment in the amount of \$120.62 for the period of January 2014 to March 2014 consistent with the November 4, 2014 letter of Attorney Wettersten filed with DHA. Any sums already recouped on the reversed claims may be applied to the upheld claim; any remaining sums must be returned to petitioner. These actions must be completed within 10 days.

**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 7th 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 7, 2014.

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