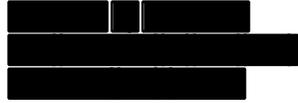




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/160492

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 08, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Polk County Department of Social Services in regard to Child Care, a hearing was held on October 23, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Child Care that allegedly occurred because she was not engaged in an approved activity.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Diana Peterson

Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Polk County.
2. The petitioner was an ongoing recipient of Child Care benefits at all times relevant to this decision.

3. From January 19, 2014, through April 20, 2014, while receiving these benefits, her mother paid her to care for her autistic younger brother. She received \$2,571.04 in Child Care payments during this period.
4. The petitioner's mother does not have a Federal Employee Identification Number she uses when paying the petitioner to care for her younger brother.

### **DISCUSSION**

Child Care Benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The state recognizes only two categories of unsubsidized employment that qualify for benefits. They are:

- 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN), or
- 2) Being legitimately self-employed.

*Day Care Manual*, § 1.5.3.

Child Care policy goes on to state that “[a]ll qualified employers must have a FEIN documented in the individual’s CARES Worker Web record for the verification of the unsubsidized employment to be considered complete.” *Day Care Manual*, § 1.5.3.1. The W-2 statute requires the department to recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(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 the result of client error, administrative error, or intentional program violation.

The county agency seeks to recover \$2,571.04 in Child Care benefits the petitioner received from January 19, 2014, through April 20, 2014, because it contends that she was not engaged in a qualifying activity. She is a student who worked at a gas station. In January, her mother offered to pay her to watch her autistic younger brother, which was more convenient than working at the gas station. Unfortunately, her mother is not an employer with a documented FEIN, and the petitioner does not claim to be engaged in self-employment. The petitioner testified credibly that she did not realize she could not receive a Child Care subsidy while caring for her younger brother, pointing out that as soon as she learned she could not, she found another job. Nevertheless, her babysitting was not an approved activity, so she was not entitled to receive Child Care payments while doing it. Because the Department must recover all overpayments, she must repay the \$2,571.04 in Child Care payments made on her behalf during this period.

### **CONCLUSIONS OF LAW**

The county agency correctly seeks to recover the Child Care payments the petitioner received while not engaged in an approved activity.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 27th day of October, 2014

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\sMichael D. O'Brien  
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 27, 2014.

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