



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/160859

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 16, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$959.51.

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: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 29, 2014 Petitioner gave birth to a new baby.
3. On June 30, 2014 Petitioner was terminated from her employment at [REDACTED]. Petitioner was eligible for child care assistance when she worked at [REDACTED].

4. After Petitioner's employment ended, Petitioner continued to send her child to daycare, and the agency incorrectly continued to pay for child care from June 29, 2014 through August 31, 2014. This resulted in an overpayment in the amount of \$959.51.
5. Petitioner does not dispute the amount of the overpayment. Petitioner's disputes that there was an overpayment because she believes that she was in an approved activity when she completed tasks which were conditions on her CHIPS (children in need of protection and services) order. Petitioner's children were placed in her home during the time of this overpayment.

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

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed October 2014).

In order to qualify for child care assistance one, or both parents in the case of a two parent household, must be in an "approved activity." *Child Day Care Manual*, §1.4.8.2. An approved activity is a term of art in child care assistance cases. *Id.* Approved activities include employment with a qualified employer who has a federal employer identification number, reports wages, and participates in workmen compensation, high school for someone under 19, technical school in some cases, and some self-employment in some cases. *Id.* at §1.5.0. This is not an exhaustive list. *Id.* Activities that are not "approved activities" include unsubsidized employment, job training programs longer than two weeks or where a job is not guaranteed at the end of the training programs, and work study. *Id.*

There are no policy regulations specifically addressing conditions on a CHIPS (child in need of protection and services) order. However, some conditions could be approved activities while other conditions may not be approved activities. The specific condition would have to be an approved activity. For example, if the condition were that to maintain employment, and the parent was eligible for child care assistance, then the parent would receive child care assistance while he or she was meeting this condition. On the other hand if the requirement was to attend anger management or a parenting class, then that would not a listed approved activity.

In this case, Petitioner did not believe that there was an overpayment because when her child attended child care, she was doing activities related to her CHIPS order. I note that the agency continued to authorize child care because Petitioner's W-2 worker had completed a new employability plan with Petitioner. Petitioner argues that her social worker from child protection services (CPS) unit contacted her W-2 worker and that is why the child care was authorized. She believes that child care should have been authorized because she was doing things related to her CHIPS order while her child attended child care. Specifically she was attending a parenting class or parenting mentorship program. The record was held open and following the hearing, the department submitted the only two e-mails the W-2 worker had from Petitioner's CPS social worker. The only e-mailing addressing child care assistance is from after the overpayment and is addressing child care assistance if Petitioner goes back to school full time in September. This overpayment occurred between June and August.

I note that this overpayment occurred right after Petitioner had a new baby when Petitioner continued to send her older child to daycare. Having a brand new baby in the home is an exciting, but very stressful time. Petitioner is a single mother. She previously had an older child removed from her care, and later placed back in her home. Her parenting skills were being monitored by the CPS social worker. Although I do not believe that Petitioner was lying, Petitioner is not an accurate historian regarding the child care assistance authorization.

Petitioner argues that she was doing tasks related to her CHIPS order. Attending a parenting class or parent mentorship program is not an "approved activity." The agency should have never authorized payment for child care during this overpayment period. However, the agency must collect overpayments even if the overpayment is their fault. Petitioner did not dispute the amount that the agency paid for child care during the overpayment period.

CONCLUSIONS OF LAW

The agency correctly assessed a child care overpayment in the amount of \$959.51 for the time period of June 29, 2014 through August 31, 2014.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 22, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud