FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/161056

PRELIMINARY RECITALS

Pursuant to a petition filed October 6, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on October 29, 2014, by telephone.

The issue for determination is whether petitioner's husband lived with her in late 2013.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Keisha Love
Milwaukee Early Care Administration
1220 W. Vliet St., 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Milwaukee County.

2. Petitioner received child care assistance for her daughter from 2012 through the present. She married her daughter's father in September, 2012, but did not report the marriage to the agency; in March, 2013, while verifying petitioner's income, an agency worker discovered that petitioner had changed her name with the employer. Petitioner explained to the worker then that although she had married the father, they never lived together and were working to have the marriage annulled. See 3/18/13 case note.

3. In March, 2014, an application for health care was filed showing that petitioner's husband lived at petitioner's address (it is not clear who filed the application; petitioner denied doing so). Then in July, 2014, petitioner reported that he was living with her.

4. The agency investigated the living arrangement. It found that petitioner's husband had been using her address for all purposes consistently since 2012. He reported that address to four different employers as well as the unemployment office.

5. The agency found that petitioner's husband was unemployed in the months of October through December, 2013, and thus he was not participating in an approved activity for child care purposes.

6. By a notice dated October 3, 2014, the agency informed petitioner that she and her husband were overpaid $993.51 in child care assistance from October 13 through December 31, 2013, claim no. [redacted].

DISCUSSION

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. Admin. 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. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

The issue in the case is whether petitioner's husband lived with her after the marriage. Both appeared and denied that he lived with petitioner until they reconciled in July, 2014, and they provided a letter from a person stating that he stayed with that person "occasionally" from 2012 until June, 2014. That meager evidence is not enough to rebut the simple fact that petitioner's husband was telling all important entities that he lived at the same address as his wife. "Occasionally" staying with a friend is not the same as living with the friend.

Petitioner is learning a very basic lesson. If you are on a welfare benefit for which eligibility depends on the father of your child being absent, it is a poor idea to allow the father to use your address as his mailing address with his employers and government agencies. It leads to the presumption that he lives with you, and it is hard to rebut that presumption in the absence of any credible document or other evidence tying him to a different address.

Petitioner testified that she told an agency worker about the marriage and that the worker allowed her to continue receiving assistance. With the parties' permission I searched for a case note that would verify petitioner's statement. I found one, but it did not help petitioner's case. The case note from six months after the marriage shows that petitioner did not report the marriage. It was discovered by the worker because petitioner's work records showed that she had a different last name than the one she still was reporting to the agency. Petitioner told the worker that the marriage was being annulled, and the worker apparently took petitioner at her word. In fact there was no annulment and petitioner and her husband are still married and living together.

Based upon the evidence I conclude that the agency correctly determined that petitioner and her husband lived together after their marriage. For that reason child care paid in October, November, and December, 2013 was overpaid because petitioner's husband was not employed during that period, and thus the household was not eligible for child care assistance.

CONCLUSIONS OF LAW

The agency correctly determined a child care overpayment during the period October 13 to December 31, 2013 because petitioner and her husband lived together, and her husband was not employed or in a W-2 activity during the period.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 3rd day of November, 2014

\sBrian C. Schneider
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 3, 2014.

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