



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CCO/161164

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regards to an overpayment of Child Care benefits, a telephone hearing was held on November 19, 2014, at Milwaukee, Wisconsin. A hearing set for October 30, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$145.91 in Child Care Benefits from July, 2013 – March, 2014, due to an intentional program violation, or otherwise.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, Attorney
Tameka Terrell, Child Care Benefits Worker
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County. She received Child Care benefits from the Milwaukee County agent of the Department of Children and Families for the care needs of at least one child during at least the period of July, 2013 – March, 2014.

2. On October 3, 2014, the Department issued a Child Care Overpayment Notification letter to the petitioner informing her that it had determined she had been overissued \$145.91 in Child Care benefits during the period of July, 2013 – March, 2014, due to her intentional failure to provide accurate information for her benefits.
3. On October 10, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determination of October 3, 2014.
4. Subsequently, the agency also acted on an alleged Intentional Program Violation finding in a notice dated October 3, 2014; that issue is not before this administrative law judge. Rather, it was and is pending at this time for hearing before Administrative Law Judge Mayumi Ishii, in DHA Case No. ML-14-0407.
5. The petitioner was working a second job at [Redact] between July 16, 2013, and April, 2014, and failed to report this job and earnings to the Department and its county agents for Child Care benefits. The agency discovered the second job earnings by state wage record crossmatch from the Department of Workforce Development. See, Exhibit #R-2 at p. 4.
6. When the second income stream was accurately added to the petitioner's budget for the period of July, 2013 – March, 2014, it was determined that she was still eligible for child care throughout the period, but that she would have been required to pay small additional monthly co-pays in the months of December, 2013 – March, 2014, totaling \$145.91. See, Exhibit #R-1, at p. 18; and see Exhibit #R-4, at pp. 11-12.
7. The petitioner had contact with the child care agency and/or the county's income maintenance agency on at least three occasions in the period of July, 2013 – March 31, 2014, and no evidence presented by either party demonstrates any affirmative report of this second job by her to the child care agency. In particular, she had two periodic reviews, on August 1, 2013, and November 12, 2013, and she did not report this [Redact] job in either. See, Exhibit #R-1, at p. 1.
8. The petitioner did not provide any evidence, or even assert at the hearing, that she had reported the [Redact] income stream to the agency. She raised no defense to the agency finding as to the lack of report of additional income; or the computation of the overpayment.
9. The petitioner intentionally did not report earnings from a second job at [Redact] during the period of July, 2013 – March, 2014 to the Department's child care agents.

### 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.

The *Child Care Manual* requires, at § 1.15.2, that a recipient must report changes in income that total \$250 or more, and the agency here determined that the petitioner's additional income stream did so exceed \$250 on repeated occasions in the tested time period, but she did not report this income. See,

Exhibit #R-4, at pp. 11-14. She was informed of her reporting requirements by the agency. See, Exhibit #R-5, at pp. 9, 13, 24, 28, 38, 43, 47, and 71.

From the fact that she was required to report it, had been repeatedly informed of her reporting requirements at reviews, and did not report it as additional income at any time, a fact finder can only conclude that she intended not to report the additional income and thus to violate a program requirement that she do so.

Here, the agency has provided overwhelming evidence demonstrating that not all of the petitioner's income was reported by her during the test period, that she was required to report it under law and policy, and that because she did not, she was overpaid \$145.91, i.e., if properly reported she would have owed small co-pays for the months of December, 2013, and January – March, 2014.

The petitioner raised no affirmative defense, and did not contest the computation of the overpayment or provide any testimony or evidence demonstrating that she reported the secondary job at Redact. Rather, she merely asserted that she did need the child care she utilized in that tested period. That need was never in doubt. Rather, she appears to have willfully failed to report additional income from a secondary source, and this income continued for several months and through a six-month recertification report period as well.

The preponderance of the evidence in this record clearly supports the conclusion that the petitioner was overpaid \$145.91 due to a client error and an intentional violation of the reporting requirements of the Child Care benefits program; and she has not proffered any evidence that rebuts the agency case.

### CONCLUSIONS OF LAW

Petitioner's second income stream from Redact should have been included in her child care case budgets in the period of July, 2013 through March, 2014; which would have required her to pay a total of \$145.91 in co-pays from December, 2013 – March, 2014; and thus petitioner was overpaid child care assistance of \$145.91 because her earned income was intentionally not fully reported by her, and therefore it was not correctly budgeted for assistance purposes, as required by the Child Care Benefits program.

**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 17th day of December, 2014

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\sKenneth D. Duren, Assistant Administrator  
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 December 17, 2014.

Milwaukee Early Care Administration - MECA

Public Assistance Collection Unit

Child Care Fraud

Attorney Redact