



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CCO/161542

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Child Care, a telephone hearing was held on November 18, 2014. The hearing in this matter was held at the same time as hearings for two additional overpayment matters concerning the petitioner identified as: MOP-161540 and FOP-161539.

The issue for determination is whether petitioner is liable for an overpayment of Child Care benefits.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of La Crosse County.
2. Petitioner is the father of minor child, AC; the mother of AC is PB.

3. Petitioner, AC, and PB all lived together during the time periods relevant to the Child Care overpayments identified at *Finding of Fact #5*, below; neither petitioner nor PB reported this to the respondent.
4. PB has a daughter, BV, who also lives with her. Petitioner is not the parent of BV.
5. The respondent established Child Care overpayment claims against petitioner as follows:

Claim no.	Redact	01/01/2012-09/30/2012	\$4,848.00
Claim no.	Redact	10/01/2012-9/30/2013	\$6,011.00
Claim no.	Redact	10/01/2013-03/31/2014	\$2,020.00
6. The petitioner had income during the time periods relevant to the Child Care overpayments listed in *Findings of Fact #5*, above; this put PB's Child Care assistance group over the income limits for Child Care eligibility during those time periods.

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 Wisconsin Shares Child Care Assistance Manual, Chapter 1, §1.2.0 defines the family group that must be included in a child care application:

an individual who is a custodial parent or placement parent and their dependent children and all dependent children with respect to whom the individual's dependent child is a custodial parent. Family or Family Group includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.

In the same section a "custodial parent" is defined as a parent who lived with the child. In two-parent families both parents must meet all Child Care eligibility criteria. Wis. Admin. Code § DCF 101.26(1); Child Care Manual §1.4.8.2.; See also, Wis. Stat. § 49.155(1m)(d). Low-income parents applying for child care assistance must have gross income at or below 185% of the Federal Poverty Level ["FPL"]. Once a family has established eligibility, gross income can rise to 200% FPL. Parents are eligible for child care assistance, until the gross income exceeds 200% FPL. Wis. Stat. § 49.155(1m)(c)1. (2011-12); Child Care Manual §§1.6.2 & 1.6.3.

PB appealed the overpayment as it pertained to her, and contested the respondent's assertion in that case that petitioner and PB resided together. In a decision dated September 16, 2014, Administrative Law Judge Sean P. Maloney wrote:

The burden is on the County to show that DC lived with petitioner and the children during the entire time periods in question. The County has more than satisfied this burden. Therefore, it must be concluded that DC lived with petitioner and the children during the entire time period in question.

The County presented overwhelming convincing evidence that establishes that DC lived with petitioner and the children during the all relevant time periods. This includes: documentation from the Wisconsin Department of Transportation ["DOT"] (vehicle titles; driver's license); credit reports from *TransUnion* and *Experian*; Wisconsin Circuit court records; voter registration; voting records; child support records (both Wisconsin and Illinois); school records; *Facebook* entries; interviews with petitioner's neighbors; interviews with those at the address in La Crosse where DC was claimed to have lived; observation of DC traveling from work to the address where petitioner and the children live; an investigative report dated May 13, 2013; and , a second investigative report dated April 16, 2014.

Petitioner testified that she and DC were together but fought and could not make it work. She testified that DC uses her address as his mailing address and that he also used other addresses. She testified that she and DC begin dating again in the summer of 2013, that DC moved back in with her in March 2014 (but was not "full moved-in" until the summer of 2014), and that she notified the County of this. Given all of the other evidence in the record of this matter, petitioner's claim that DC did not live with her (and the children) during the time period of the overpayments is simply not credible.

DHA Decision, FOP/159508.

I concur with Judge Maloney's findings. The agency's burden of proof is not beyond a reasonable doubt; rather it is by the preponderance of the credible evidence, a fairly low standard that requires only that it show that it is more likely than not that PB and AC lived with the petitioner. In testimony at hearing on the instant matter, the petitioner conceded that he lived with PB at the [Redact] address, but argued that he did not live there consistently. The petitioner offered additional information at hearing that purportedly demonstrated that he lived at other addresses. See, Exhibits 5-C, 5-D, 5-G, and 5-H. While these documents do demonstrate several addresses utilized by the petitioner, only Exhibit 5-C, an affidavit of [Redact] actually addresses petitioner's residency. However, that affidavit's contention that petitioner resided with [Redact] between July, 2008, and March, 2014, is contradicted by petitioner's own testimony indicating that he lived with PB during that time period, albeit inconsistently. I further note that PB's testimony in her own hearing corroborated petitioner's testimony, and not the information provided by the affidavit. Petitioner has failed to substantively rebut the residency information and evidence provided by the respondent.

The petitioner also argued at hearing that the income ascribed to him by the respondent is incorrect, as it included "imputed income," i.e., the value of gifts or non-cash bonuses from petitioner's employer. All household gross income is counted when determining Child Care eligibility. Child Care Manual, § 1.6.4. Because the value of the gifts/bonuses constitutes petitioner's taxable income, I find that the respondent properly included that income in determining petitioner's overall gross income.

While I conclude that the petitioner has failed to establish that the respondent erred in finding that petitioner, PB, and AC resided together between January, 2012 and March, 2014, I do not find that the respondent has correctly determined the petitioner's liability for the overpayment.

Regarding the recovery of Child Care overpayments, the Wisconsin Administrative Code provides, in pertinent part, as follows:

(3) Liability.

(a) Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., "parent" has the meaning given in s. 49.155 (1) (c), Stats.

(b) Liability for repayment of an overpayment shall be joint and several.

(c) Liability for overpayments caused by administrative error shall be limited to one year prior to the date that the agency or department discovers the error for overpayments determined on or after August 1, 2005.

Wis. Admin. Code § DCF 101.23(3).

The respondent has asserted three Child Care overpayments claims that appear to pertain to both AC and to BV. BV is the child of PB. BV is not the child of petitioner. As petitioner is not BV's parent, nonmarital coparent, or stepparent he cannot be liable for any overpayment of Child Care benefits attributable to BV. This matter shall be remanded to the respondent to re-determine petitioner's liability for Child Care overpayments **attributable specifically to his daughter, AC.**

CONCLUSIONS OF LAW

The county agency has failed to establish that it correctly established the petitioner's liability for the following Child Care overpayments:

Claim no. [Redact]	01/01/2012-09/30/2012	\$4,848.00
Claim no. [Redact]	10/01/2012-9/30/2013	\$6,011.00
Claim no. [Redact]	10/01/2013-03/31/2014	\$2,020.00.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to re-determine and re-calculate petitioner's liability for the Child Care overpayment claim nos. identified at *Finding of Fact #5*, limiting petitioner's liability to those portions of the Child Care overpayment claims attributable specifically to his daughter, AC. All actions required by this Order shall be completed within 10 days following issuance of this decision.

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 19th day of December, 2014.

\sPeter McCombs
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 19, 2014.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud