FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/158641

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 30, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for consecutive briefs. The Department's attorney timely submitted his brief which is received into the hearing record. However, the petitioner failed to submit any responsive brief to the Division of Hearings and Appeals.

The issue for determination is whether the Department is correctly seeking recovery of child care overpayments to the petitioner totaling $3,852.53 during the period of April, 2012 through April, 2014, due to unpaid child care co-payments resulting from petitioner under-reporting her earned income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Attorney Joseph McCleer (recently substituted by Attorney Wettersten)
Office of Legal Counsel
Department of Children And Families
1220 W. Vliet St. 2nd Floor
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of [redacted] who resides with her three children.

2. The petitioner received child care benefits for two of her three children during the period of April 1, 2012 through April 30, 2014. Exhibit R-7.

3. The petitioner submitted six month report forms (SMRFs) and documentation to the Department, and was determined to be eligible for child care benefits for the entire period of April 1, 2012 through April 30, 2014 with only a minimal co-pay amount due to the household's reported very low household income. Exhibits R-4 and R-5.

4. During May, 2014, child care subsidy specialist, [redacted], discovered through petitioner's State Wage Record that petitioner's earned income from her two of her three employers was substantially higher than petitioner had been reporting during the entire period of April, 2012 through April, 2014. [redacted], petitioner reported an hourly wage of about $9.50 per hour when her actual wage was $16 per hour.

5. Petitioner's under-reporting of her earned income was confirmed by employer verifications of her earning from two of her employers, [redacted]. Her third employer was [redacted]

6. Based upon petitioner's actual earned income, her required co-pay amounts should have been substantially higher resulting in unpaid co-payments during the entire child care overpayment period.

7. The Department sent May 29, 2014 child care overpayment notices to the petitioner stating that petitioner received the following child care overpayments due to her failure to timely and accurately report her household income: a) $2,088.09 for 2012; b) $1,259.04 for 2013; and c) $505.40 for 2014 for a total child care overpayment of $3,852.53. See Exhibit R-1, pp. 17-33. The childcare worksheets indicated how the overpayments had been correctly calculated.

DISCUSSION

I. JURISDICTION.

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. See, *DWD Operations Memo*, #03-66. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. Seq*., *Child Care Manual*, § 2.1.5.

II. THE PETITIONER UNDER-REPORTED HER EARNED INCOME RESULTING IN UNDER-PAYING HER ACCURATE and FULL CO-PAYMENT AMOUNTS RESULTING IN CHILD CARE OVERPAYMENTS FOR THE ENTIRE OVERPAYMENT PERIOD.

For an individual to be eligible for child care authorizations:

The gross income of the individual's family [must be] at or below 185% of the poverty line for a family the size of the individual's family or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual's family [must be] at or below 200% of the poverty line for a family the size of the

individual's family. In calculating the gross income of the family, the department or county department or agency determining eligibility shall include . . . income described under s. 49.145(3)(b)1 and 3.

Wis. Stat § 49.155(1m)(c)1.

An Individual is liable for the percentage of the cost of the child care specified by the department in a printed copayment schedule." § 49.155(5). Such copayment schedule is codified in Wis. Admin. Code § DCF 201.08. The co-payment amount is based upon family size, income, and the number of children receiving Wisconsin Shares subsidized care. Child Care Manual, 3.7.0, "Co-Payments."

In the instant case, the Department discovered through petitioner's State Wage Record that petitioner's earned income was substantially higher that reported by the petitioner during the overpayment period from the second quarter of 2012 through the first quarter of 2014. Petitioner's under-reporting of her earned income was confirmed by employer verifications of her earning from two of her employers, [redacted]. The Department utilized the State Wage records to re-calculate the amount of petitioner's unpaid child care co-payments during the entire overpayment period. See Exhibit R-1, pp. 3-16. The Department accurately calculated the overpayment for each calendar year as follows: a) $2,088.09 for 2012; b) $1,259.04 for 2013; and c) $505.40 for 2014. See Exhibit R-1, pp. 17-33.

III. THE AUTHORITY TO ADMINISTRATIVELY RECOVER CHILDCARE OVERPAYMENTS.

During the hearing and in the Department's brief, the Department presented a persuasive witness (child care subsidy specialist [redacted]), and extensive, detailed exhibits to convincingly establish that the petitioner under-reported her earned income from two employers during the entire child care overpayment period of April, 2012 through April, 2014. The Department clearly established by the preponderance of the evidence that during the entire overpayment period, petitioner should have been responsible for a significantly higher co-payment that what she actually paid. The petitioner attempted to refute the Department's case, but was entirely unable to reliably undermine or refute any of the Department's testimony or documentation. Nevertheless, petitioner asserted that the overpayment was not her fault. However, the applicable overpayment rule requires recovery of the overpayment, regardless of fault:

> **DCF 101.23 Recovery of overpayments**. (**1**) DEFINITIONS. In this section:
> …
> (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 result of client error, administrative error, or intentional program violation.
> …
> (**3**) LIABILITY. (a) Liability shall extend to any parent, non-marital 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, …

Wis. Admin. Code §DCF 101.23(1)(g), (3)(a). See in accord, *Child Day Care Manual*, §2.1.5. Child Care benefits are paid out pursuant to Wis. Stat. § 49.155. 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 Accordingly, based upon the above, I conclude that the Department clearly established with the preponderance of the evidence that it is correctly seeking recovery of child care overpayments to the petitioner totaling $3,852.53 during the period of April, 2012 through April, 2014, due to unpaid child care co-payments resulting from petitioner under-reporting her earned income.

CONCLUSIONS OF LAW

The Department is correctly seeking recovery of child care overpayments to the petitioner totaling $3,852.53 during the period of April, 2012 through April, 2014, due to unpaid child care co-payments resulting from petitioner under-reporting her earned income.

THEREFORE, it is **ORDERED**

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 26th day of February, 2015

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\sGary M. Wolkstein
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 February 26, 2015.

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