



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

CCO/159338

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC) benefits, a hearing was held on August 20, 2014, at Milwaukee, Wisconsin. The hearing record was held open for an additional submission, which was received.

The issue for determination is whether the petitioner was overpaid CC benefits from July 21, 2013 – December 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted, CC Subsidy Spec.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.

2. The petitioner has three minor children who require childcare while she is working or participating in W2 activities. The petitioner had CC benefits paid on their behalf from at least July 21 through December 31, 2013. For the July 21 – December 31, 2013 period, CC totaling \$4,577.62 was paid out on the household's behalf. Exhibit 1-G.
3. The petitioner was not participating in a W2 approved activity from July 21, 2013 through December 2013. She *was* working part-time for [Redact], with fluctuating hours. On June 30, 2013, the CC agency created enrollment-based CC authorizations for her children for the following weekly hours: 7 hours for WM, 7 hours for TW, and 27 hours for TAW (age 2). Exhibit 1-G, p.29. Given the variable nature of the petitioner's work hours, the CC agency should have created attendance-based authorizations, which would have resulted in lower payments over time to the daycare provider.
4. The petitioner used the authorized daycare hours. Her employer would sometimes call her in, and then advise that she was not needed that day. The petitioner left her children in daycare on those days, even though she was available to care for her children. For example, in October 2013, the petitioner only worked 22.5 hours for the month, but utilized 102 hours of daycare service for TAW, per provider reporting. Exhibits 1-E, p.24, & 1-G, pp. 38-39.
5. On July 15, 2014, the county agency issued a *CC Client Overpayment Notice* to the petitioner, advising that she had been overpaid **\$1,511.69** for the July 21, 2013, through December 31, 2013, period (claim [Redact]), due to agency error. Exhibit 1-A. The overpayment amount is the difference between the CC subsidy paid to the provider minus what should have been paid consistent with the petitioner's actual work hours. The petitioner timely appealed therefrom.
6. The petitioner is enrolled as a part-time student at [Redact Redact]. She was enrolled in a one-credit basic education class (reading) in the summer of 2013, and in two-credits of basic education for the fall 2013 semester. The classes are self-paced, with no identified class dates/times. *See*, Exhibit 2, [Redact] letter. The petitioner aspires to obtain a nursing degree. Her monthly work hours totaled 35.5 in July, 71.25 in August, 51.5 in September, 22.5 in October, 32.5 in November and 21.75 in December 2013.

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 (the responsible agency at the time) changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.1.5.3. *See also*, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

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*, §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy is available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. The CC

agency acknowledges that it bears much, but not all, of the responsibility for this overpayment because it created the higher-paying enrollment-based authorizations for the petitioner, rather than attendance-based authorizations (which would have paid for fewer hours of care, matching the children's actual attendance).

III. AN OVERPAYMENT OCCURRED.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation. She also acknowledges that she was not participating in W2 activities during the overpayment period. She also acknowledges that although she was working, her work hours did not always require her to use the number of CC hours paid for by the program.

The pertinent portion of the statute setting out CC nonfinancial eligibility criteria reads as follows:

(1m) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and *child care services for that child are needed in order for the individual to do any of the following*:
1. Meet the school attendance requirement under s.49.26(1)(g)[Learnfare, for minor parents].
 - 1m. Obtain a high school diploma ...
 2. *Work in an unsubsidized job ...*
 3. *Work in a Wisconsin works employment position ...*
 - 3m. Participate in a job search or work experience component of the food stamp ... program.
 4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
 5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

[emphasis added]

Wis. Stat. §49.155(1m)(a). See in accord, *Manual* at §1.4.8 and §1.5.0. The petitioner was not eligible for CC benefits for the times when she was not working, unless she establishes good cause for nonparticipation.

The petitioner first argued that because the too-generous authorization was the agency's error, she should not be responsible for repayment. As noted above, the agency is able to go back for one year to collect overpayments that are the fault of the agency, so that argument fails. The petitioner then argued that she should not be subject to recovery because she was attending technical school in addition to working. It is true that some CC hours can be authorized for a working person to allow her to attend classes:

1.5.6. Basic Education

Participate in basic education, including English as a Second Language, literacy tutoring, or a course that is approved by the state superintendent of public instruction for granting a high school graduation equivalency ... and if the individual is also employed no less than five (5) hours per week/20 hours per month in an unsubsidized job.

- A school and work schedule is required for all participants. ...
- The individual is employed at least five (5) hours per week or 20 hours per month at the time the authorization for school begins and continues to be employed at least five (5) hours per week

or at least 20 hours per month throughout the semester. A child care administrative agency may have a policy that exceeds 20 hours per month if the policy is in writing and is applied to all parents and is made available to the parent.

- The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment. ...
- Wisconsin Shares child care assistance is not available for study time.
- Wisconsin Shares child care assistance is not available for online courses that are self-paced and do not require specific log on times for class sessions.

Manual, § 1.5.6. If the petitioner had an actual class schedule that required her to be present on a regular basis, the CC agency could have approved hours for such attendance (but not study time). However, the best information in the hearing record is that the petitioner was on a self-paced program, and that she had not submitted a class schedule showing when she would have to attend a class. The overpayment determination stands.

CONCLUSIONS OF LAW

1. The petitioner was overpaid in CC benefits because her provider was paid for care at times when the petitioner was not working.
2. The petitioner was not eligible for CC benefits for the hours when she was participating in self-paced basic education activities.
3. The petitioner was overpaid **\$1,511.69** CC for the July 21 through December 31, 2013, period.

THEREFORE, it is

ORDERED

That the petition is 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 27th day of January, 2015

\sNancy J. Gagnon
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 January 27, 2015.

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