



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/160967

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services in regard to Child Care, a telephonic hearing was held on November 19, 2014, at Janesville, Wisconsin. At the request of the parties, the record was held open until December 5, 2014 for the county agency to submit a detailed closing argument and possible reduction of petitioner's overpayment amount to DHA (and to petitioner), and then until December 19, 2014 for the petitioner's response to DHA. The county agency timely submitted its closing argument with a partial stipulation including a reduction of petitioner's child care overpayment from \$860.54 to \$361.73. However, the petitioner did not submit any response to DHA by the deadline or even by the date of this decision.

The issue for determination is whether the petitioner was overissued the reduced amount of \$361.73 in child care benefits during the period of December, 2013 and January, 2014, which are subject to recovery because petitioner failed to timely notify the county that her employment ended on November 25, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Laura Middleton, ESS

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who has a grandson who resides in her household.
2. The petitioner was authorized for W-2 child care for her grandson due to her employment as a surgical tech at [REDACTED].
3. The county agency sent a notice to the petitioner indicating that she was authorized for 13 hours of child care per week for her grandson. That notice required the petitioner to promptly inform the county agency to report if there was a change in her employment or income.
4. The petitioner failed to timely report to the county agency that her employment at [REDACTED] ended on November 25, 2013. Her last date on the payroll for insurance purposes was January 17, 2014.
5. On January 28, 2014, petitioner telephoned the county agency to complete her FoodShare application interview, and reported for the first time that her employment at [REDACTED] ended November 25, 2013, yet continued to use child care for her grandson.
6. During the November 19, 2014 hearing, the county agency partially stipulated that it would rescind the petitioner's childcare overpayment for September, October and November, 2013 because petitioner was entitled to 13 hours of child care each. The county agency had forgotten to include her grandson's child care needs prior to the school hours. That stipulation was confirmed in ES Supervisor Mary Donahue's November 24, 2014 letter to DHA.
7. The county agency paid to the petitioner's child care provider for the care of the petitioner's grandson during the period of September, 2013 through January, 2014.
8. The petitioner was not working or actively participating in approved Wisconsin Works Program activities after November 25, 2013, while petitioner continued to have authorization for W-2 administered child care assistance for her grandson.
9. The county agency issued a November 24, 2014 Amended Child Care (CC) Overpayment Notice to the petitioner informing her that her initial September 11, 2014 child care overpayment notice of \$860.54 had been reduced to \$361.73, due to the stipulation set forth in Finding of Fact #6 above. The remaining overpayment of \$361.73 for the months of December, 2013 and January, 2014 in child care assistance resulted because petitioner stopped working on November 25, 2013, at [REDACTED], but she failed to timely report until January 28, 2014 that her employment ended. As a result, she was not employed or participating in any approved W-2 activities during that two month period that she was receiving childcare benefits for her grandson.
10. The petitioner's remaining child care overpayment amount is \$361.73, as no recoupment or repayment has occurred.

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. Adm. 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. Adm. 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); W-2 Manual, §15.2.0. 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, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

The county agency correctly determined that the petitioner was overpaid child care assistance because she failed to timely notify the county agency that her employment ended on November 25, 2013. As a result, she was neither employed nor participating in approved W-2 activities. The county agency did not discover the change in petitioner's employment until on January 28, 2014, when petitioner telephoned the county agency to apply for FS benefits, and reported that her employment at [REDACTED] ended on November 25, 2013.

During the November 19, 2014 hearing, the county agency representative presented a well-organized and documented case to support the child care overpayment. After reducing the petitioner's child care overpayment as explained in Findings of Fact #6 and #9 above, the county agency correctly concluded that petitioner was not attending school for statutorily enumerated purposes, working in unsubsidized employment, receiving W-2, or participating in an approved W-2 position during the period of the December, 2013 and January, 2014 overpayment, while still using W-2 child care funds. See WI Stat § 49.155(1m) (a)1-5 and the Child Care Manual, Chapter 2, sec. 2.2.0, "Nonfinancial Eligibility."

During the hearing, petitioner did not dispute that the county agency paid for childcare benefits for her grandson during the overpayment period in question. The petitioner also agreed that employment ended on November 25, 2013, but she did not timely notify the county agency of that employment ending. The petitioner wanted to explain that she remained in payroll status until January 17, 2014, but that status was only to allow her remain on the company's insurance. The hearing record is clear that petitioner was neither employed nor participating in approved W-2 activities during the overpayment period in question. The petitioner was also unable to refute the county agency's case or the correctness of its calculation of her reduced child care overpayment of \$61.73 during the period in question. The petitioner was not eligible for W-2 child care payments during the period of December, 2013 and January, 2014.

After hearing the county agency's case, the petitioner basically indicated that she was no longer disputing the child care overpayment. In any case, the Department is required to recover all overpayments of public assistance benefits pursuant to Wis. Stat. §49.195(3), 45 C.F.R. §233.20(a)(13)(I). Child care assistance is no exception. Child Care Manual, Ch. 1, §10.3.0. Accordingly, for the above reasons, the county agency correctly determined that the petitioner was overissued \$361.73 in child care benefits during the period of December, 2013 and January, 2014, which are subject to recovery because petitioner failed to timely notify the county that she was neither working nor participating in approved W-2 activities, due to her employment ending on November 25, 2013.

CONCLUSIONS OF LAW

1. The county agency has correctly determined that the petitioner was not eligible for childcare benefits for December, 2013 and January, 2014, as she was neither employed nor participating in approved W-2 activities due to her employment ending on November 25, 2013.
2. The Department correctly seeks to recover from the petitioner the reduced amount of \$361.73 in overpaid child care assistance.

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 27th day of February, 2015

\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 27, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud