



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

CCO/161432

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to Child Care (CC), a hearing was held on January 6, 2015, at Chilton, Wisconsin.

The issue for determination is whether the petitioner was overpaid CC benefits from June 22, 2014 to September 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact, ES Mgr.
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Calumet County.
2. The petitioner received CC subsidy benefits as a household of three persons (self and two children) from at least late 2012 through September 2014.

3. On October 14, 2014, a *CC Overpayment Notice* and worksheet were sent to the petitioner, advising that she had been overpaid \$2,448.89 in CC for the 6/22/14 – 9/30/14 period (claim # **Redact**). The overpayment amount was the total of all CC funds issued for the petitioner during the identified period. The overpayment was identified as being due to client error for failure to timely report the addition of the petitioner’s husband to her household.
4. The petitioner and **Red. Redact** lived together as unmarried persons continuously since 2010. She began providing foster care to two children, D.Y. and T.Y. in 2011, and received CC assistance for them while she worked. The petitioner’s CC worker was aware that Mr. **Redact** was living in the household. His presence in the household was irrelevant to CC eligibility/benefits at that time because they were not married, and alternatively, he was not the father of the two adopted children or any other children with the petitioner. Thus, the CC benefit was calculated by considering only the petitioner’s earnings.
5. In November 2012, the petitioner adopted D.Y. and T.Y. Mr. **Redact** did not adopt the two children.
6. The petitioner married Mr. **Redact** on June 7, 2014. He did not adopt D.Y and T.Y. They did not change their address. The petitioner continued her employment and continued to receive CC benefits for the two children. Mr. **Redact** was not employed from June 22 through September 13, 2014.
7. There is no evidence in this record that Mr. **Redact** was in an “approved activity” (e.g., unsubsidized employment) during the June 22 – September 13, 2014, period.
8. At the time of her next required periodic case review on October 2, 2014, the petitioner reported that she had married Mr. **Redact** in June 2014. The agency then determined that the petitioner had been overpaid CC because Mr. **Redact** was not in an “approved activity” during the overpayment period, and was therefore available to care for his wife’s children.
9. The authorization notice issued to the petitioner contained the following pre-printed, standard language:

Parent Responsibilities

...

You must inform your child care eligibility worker within 10 days of the date of any change in household or income, including:

- You move to a different address or someone moves into or out of your home.
- There is a change in household income.

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. *Child Day Care Manual*, §2.1.5.3. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. AN OVERPAYMENT OCCURRED.

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 provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. If the overpayment error was exclusively caused by the agency, the agency cannot create an overpayment period that extends back more than 12 months from the overpayment notice date.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation, does not dispute the CC amounts paid for the two children, does not dispute her marriage date, and does not contest that she first reported the marriage at her October 2014 review.

The petitioner's first argument is that a CC worker knew her household situation all along, so this overpayment was the result of agency worker error. This argument fails, due to the strict language of the overpayment rule. I have no choice on that issue. Even if the overpayment was completely the fault of the worker, the petitioner would be liable for the overpayment.

The petitioner also argues that there should be no overpayment liability, because her husband has no legal responsibility for her adoptive children. Therefore, his conduct is irrelevant to the CC benefit. This argument also fails. The CC program has its own rules, which differ from rules that otherwise apply to a spouse. The CC program rules specifically require that a CC household/assistance group must include the applicant/recipient's spouse. *Manual*, § 1.3.8. A change that affects eligibility, such as marriage, must be reported within 10 days of the event. *Id.*, § 1.15.0. The spouse's ability to provide at-home child care is then considered. Thus, the marriage did affect CC eligibility, and it should have been promptly reported, per program rules.

The petitioner's third and best argument is that she was never notified of the requirement to report her marriage to the CC program. This is effectively a due process argument. The "Parent Responsibilities" language on the petitioner's authorizations requires reporting within 10 days for an address change, household income change, or when "someone moves into or out of your home." See, Exhibits 1, 5. Similarly, the ACCESS application/renewal form, under *Child Care Recipient Responsibilities*, advises the recipient to report a change within 10 days if "you move to a different address or someone moves into or out of your home." Marriage is not mentioned. In contrast, instructions for BadgerCare Plus/Health Care in the same document explicitly require a 10-day report if "someone gets married or divorced."

In the uncommon circumstances of the petitioner's case, no one moved when she married in June (they already lived together). Also, the household income did not change because her husband was temporarily unemployed. The children continued to go to daycare while the petitioner worked and her husband sought employment. He did actually secure new employment in September. The petitioner reported the marriage at her next scheduled review, instead of within a 10-day timeframe.

I conclude that the petitioner did not have adequate notice of the need to report the marriage for CC purposes, so she should not have been subject to the 10-day reporting requirement (instead, she was required to report at her next six month review, which she did). Because the 10-day requirement was not applicable, the overpayment cannot stand. The Department may supply me with an example of a document provided to the petitioner that advised her of the need to report a marriage within 10 days for CC purposes as an attachment to a Rehearing Request (see below); if I get such a document I will certainly reconsider this ruling. However, *the hearing record before me* does not contain a document that

requires 10-day marriage reporting on a CC case. Also, the Department may wish to revise the language for reporting changes on the ACCESS application to include a marriage reporting requirement in the CC section.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner was overpaid CC from 6/22/14 through 9/30/14.
2. The overpayment may not be collected from the petitioner due to lack of notice of a requirement that marriage be reported within 10 days for the CC program.

THEREFORE, it is

ORDERED

That the petition is remanded to the agency with instructions to cease collection efforts on claim # [REDACTED] within 10 days of the date 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 31st day of March, 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 April 1, 2015.

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