



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CCO/161435

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Barron County Department of Human Services in regard to Child Care, a hearing was held on December 18, 2014, at Barron, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged 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: Redact

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Barron County.

2. On October 13, 2014, the county agency notified the petitioner that it intended to recover \$1,953 in Child Care Benefits she received from March 30, 2014, to July 26, 2014, because the agency incorrectly determined her household's income.
3. The agency did not provide any evidence concerning the petitioner's household income.

DISCUSSION

The department must recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The program has an income limit that usually depends upon the income of the household in which the child lives. In those cases the income limit is 185% of the federal poverty level for new applicants and 200% of federal poverty level "for an individual who is already receiving a child care subsidy." Wis. Stat. § 49.155(1m)(c)1. But if those caring for the child are doing so under a court order and receiving Kinship Care benefits under Wis. Stat. § 48.57, the income limit is determined by the child's parent's income and is 200% of the federal poverty level. Wis. Stat. § 49.155(1m)(c)1h. (Kinship Care pays \$220 per month per child to a qualified relative who cares for a child he bears no legal responsibility to support Wis. Admin. Code, § 58.03(12).) The Department seeks to recover \$1,953 in Child Care Benefits the petitioner and her husband received for care provided to her grandchild.

The girl was left with them on Super Bowl Sunday last year and never picked up. She was three months old at the time. The petitioner and her husband agreed to care for her but sought some help because they had one child in high school and another in college. They had several meetings with the county agency workers who told them they could get help with child care. Those workers also told them about Kinship Care. They did not seek Kinship Care because they believed help with child care alone would be enough to meet their needs. They were told that they could get child care assistance without receiving Kinship Care and that the benefits would be based on the child's mother's income. They were told wrong, of course.

But although the agency must try to recover any overpayment, it still has the burden of proving that the overpayment exists. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover benefits from the petitioner, the county agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. At the very least, the agency must present a prima facie case to go forward. This means that it must submit evidence which unless rebutted by the petitioner is sufficient to prove that there was an overpayment. Only after the agency presents a prima facie case must the petitioner submit enough evidence to rebut that case.

Ultimately, this case is about whether the petitioner and her husband's income exceeded 185% of the federal poverty level. To prove this, the agency must submit some evidence concerning their income. Neither the Notice of Decision nor any of the other documents it submitted contain this information. Because there is no evidence concerning their income, the agency has not presented a prima facie case. Therefore, I must find that it has not established that they received more benefits than they were entitled to.

CONCLUSIONS OF LAW

The county agency cannot recover Child Care Benefits provided to the petitioner from March 30, 2014, to July 26, 2014, because it has not proven by the preponderance of the credible evidence that her household income exceeded the program's limit.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end any attempt to recover the \$1,953 in Child Care Benefits she received from March 30, 2014, to July 26, 2014, and to correct its records to reflect that he did not receive an overpayment during this period.

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 22nd day of January, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 22, 2015.

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