



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

CCO/161643

PRELIMINARY RECITALS

Pursuant to a petition filed November 3, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover child care assistance, a hearing was held on January 14, 2015, by telephone.

The issue for determination is whether the county correctly determined a child care overpayment.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted signature

Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Marathon County.
2. Petitioner received child care assistance in 2011 and 2012. Throughout that period the county record showed petitioner's income to be below the child care limit based upon petitioner's reports and employer verification.
3. Petitioner's income rose to be above the child care limit in May, 2011. She did not report the increase. The county discovered the discrepancy by a state wage match.

4. The county obtained petitioner's actual income. Her gross income was above the child care limit continuously from May, 2011 through August, 2012.
5. By two notices dated September 19, 2014, the county informed petitioner that she was overpaid a total of \$2,540.48 in child care assistance between July 3, 2011 and August 31, 2012, claim nos. 7900414357 and 0900414360. The overpayments were for all child care paid by the Wisconsin Shares program during the period.

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. Admin. 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. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

In determining child care eligibility, the agency always uses gross income. Wis. Stat., §49.155(1m)(c)1; Child Care Assistance Manual, §1.6.4. The limit for an ongoing case is 200% of the federal poverty level. Manual, §1.6.3. That amount was \$2,452 in 2011 and \$2,522 in 2012. Petitioner's gross income was above those two amounts in all of the months in question.

Petitioner testified that her take home income was substantially lower than her gross. She presented pay stubs and tax returns to show the difference between her gross income and her taxable income. The state law is clear, however. Child care assistance is based upon a gross income test, and the Division of Hearings and Appeals cannot ignore the law.

Because petitioner's income was over the child care limits in the months in question, I conclude that the county correctly determined that she was overpaid \$2,540.48 in assistance.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid child care because she failed to report an increase in her gross income that would have ended her eligibility for the program.

THEREFORE, it is

ORDERED

That 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 20th day of January, 2015

\sBrian C. Schneider
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 20, 2015.

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