



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/161890

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 13, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by Waukesha County Health and Human Services in regard to Child Care, a hearing was held on December 09, 2014, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services correctly determined the Petitioner was overpaid \$1390 in childcare benefits for the period of August 10, 2014 to October 3, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Kathy Jones, Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The Petitioner's employment at a real estate office ended on August 5, 2014. (Exhibit 5)
3. The Petitioner began working for a dental office on October 7, 2014. (Exhibit 4)

4. On October 31, 2014, the Department of Children and Families (DCF) sent the Petitioner a manual Child Care Client Overpayment Notice, indicating that she had been overpaid \$1390 in child care benefits for the period of August 10, 2014 to October 3, 2014, due to a failure to accurately report work hours. (Exhibit 3)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 13, 2014. (Exhibit 1)
6. On June 9, 2014, the Petitioner received a notice regarding her child care authorization, indicating that the authorized rate for childcare was \$139.00 per week, effective June 15, 2014. The notice further indicated that the rate paid to the daycare provider would be adjusted according to the daycare provider's YoungStar rating. (Exhibit 6)
7. The rate paid to the Petitioner's provider was increased by 25% (\$34.75) per week, based upon a five star YoungStar rating. So, the Wisconsin Shares Program actually paid the daycare provider \$173.75 (\$139.00 + \$34.75) per week to care for the Petitioner's child. (Exhibits 6, 7 and 8)

### DISCUSSION

The county agency / Department of Children and Families must determine whether an overpayment has occurred; it must notify the recipient, and it must give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Wisconsin Shares Child Care Manual (CCM)*, §§2.1.5.2 and 2.1.5.3 See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.* An overpayment occurs when an individual receives more childcare benefits than he or she was entitled to receive. Wis. Admin. Code §DCF 201.04(5)(a)

The applicable administrative rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *CCM* §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 provision may be viewed online by the Petitioner at:

<http://dcf.wisconsin.gov/childcare/wishares/pdf>.

In the case at hand, the county agency asserts that the Petitioner was overpaid \$1390 in child care benefits for the period of August 10, 2014 to October 3, 2014, due to a failure to accurately report work hours. Specifically, the agency asserts that the Petitioner was not eligible for benefits during the eight weeks between August 10, 2014 and October 3, 2014, because she was not working. The Petitioner lost her job at a real estate office on August 4, 2014 and did not resume working until October 7, 2014.

The Petitioner does not dispute the fact that she did not report the loss of her employment on August 4, 2014, nor does she dispute the fact that an overpayment of benefits occurred during the eight weeks between August 10, 2013 and October 3, 2014, because she continued to use childcare, even though she was not working. However, the Petitioner argues that the overpayment calculation should not include the YoungStar rate adjustment.

According to the Petitioner the overpayment calculation should be: \$139.00 x 8 weeks = \$1112.

The Petitioner argues that she should not be required to pay back the incorrectly paid YoungStar rate adjustment, because her daycare provider gave her a billing statement showing that she was only being charged the base rate of \$139 per week for childcare. (See Exhibit 2)

However, Wis. Stat. § 49.195(3) states that the agency, shall promptly recover **all** overpayments made under ...s.49.155 {Wisconsin Shares}..." *Emphasis added.* There is nothing in the statute that excludes incorrectly paid YoungStar rate adjustments from recovery. In the absence of exclusionary language, one can only conclude that when the statute says, "recover all overpayments" it means recover all overpayments.

I note that regardless of how the daycare provider billed the Petitioner, or how the provider used the YoungStar money, the fact remains that the State of Wisconsin paid the daycare provider the adjusted rate for the

childcare used by the Petitioner and is therefore, required to recover that adjusted rate, when it has been paid incorrectly.

Thus, the agency correctly calculated the overpayment as: \$173.75 x 8 weeks = \$1390.

**CONCLUSIONS OF LAW**

The agency correctly determined that the Petitioner was overpaid \$1390 in childcare benefits for the period of August 10, 2014 to October 3, 2014.

**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 Milwaukee,  
Wisconsin, this 12th day of February, 2015.

\_\_\_\_\_

\sMayumi M. Ishii  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2015.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney Paul Schwemer