



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/161934

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care (CC), a hearing was held on January 13, 2015, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid CC benefits for the September 15 through November 23, 2013, period.

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: Monica Johnson, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner has a minor child who requires childcare while she works. She was employed by [REDACTED] prior to September 12, 2013. CC benefits were paid on her

behalf from before September 13, 2013, through at least November 23, 2013. For the September 13 – November 23, 2013, period, the CC paid out for her totaled more than \$1,749.37.

3. The petitioner was laid off from [REDACTED] on September 12, 2013. She did not report this job loss until November 21, 2013. The county agency continued to issue full-time care CC payments to the daycare provider, [REDACTED] ([REDACTED]). The child's benefit payments were "enrollment based," rather being based on actual hours attended. The petitioner continued to work 5-6 hours weekly for [REDACTED]. Because the petitioner was not employed full-time, only benefits consistent with the [REDACTED] hours should have been issued.
4. The petitioner looked for other work on her own during the subject period. Her search was not part of an FSET program assignment. She continued to take her child to the daycare while she looked for work; the care provided was not on a full-time basis.
5. The petitioner began participating in the W2 program in December 2013. It is acceptable to receive CC benefits for the hours needed to participate in W2 activities.
6. On October 2, 2014, the county agency issued a *CC Overpayment Notice* to the petitioner, advising that she had been overpaid **\$1,749.37** for the September 13 through November 23, 2013, period (claim # [REDACTED]), due to client error. Exhibit A. The petitioner timely appealed.
7. [REDACTED] has engaged in incorrect reporting of hours of child attendance to the Wisconsin Department of Children and Families, which oversees the CC subsidy program. As a result of its over-reporting of attendance hours, the Department revoked existing CC authorizations for [REDACTED] effective February 8, 2014. This effectively stopped [REDACTED] from receiving future CC subsidy payments. *See*, DHA Decision ML-14-0042. Of more interest to this case, the Department also determined that [REDACTED] was overpaid \$9,577.02 from November 2012 through March 2, 2013, for over-reporting child attendance. The Department also determined that [REDACTED] was overpaid \$48,076.66 from June 3 through August 24, 2013, for the same reason. [REDACTED] challenged the overpayment determination in a hearing with this office, and lost. *See*, DHA Decision ML-14-0043/0050.

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. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

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>.

In this case, the petitioner does not contest several things. She agrees that her [REDACTED] employment ended September 12, 2013, and that she did not timely report this termination to the CC agency. The petitioner was required to timely report (within 10 days) any job loss, and she did not do so. *Manual*, 1.15.1. Further, she acknowledged that she was not employed, other than 5-6 hours weekly at [REDACTED], from September 13 through November 23, 2013. The agency asserts that it did credit the petitioner for her [REDACTED] work hours in its overpayment calculation, and the petitioner did not point out any specific computation errors in that calculation.

The petitioner asserts that she was looking for a job on her own (not through a W2 or FSET program) during the overpayment period. She claims that she took her child to [REDACTED] on a limited basis, to facilitate her job search. [REDACTED], however, reported to the Department that the child was there full-time, and collected full-time payments. The petitioner disagrees with [REDACTED]'s reporting, and asks that she not be held responsible for [REDACTED]'s excessive claims.

This Judge reviewed this office's hearing records to learn if there was an overpayment hearing regarding [REDACTED]. There was such a hearing, and the decision was against [REDACTED]. If the overpayment period alleged against [REDACTED] (November 2012 through March 2, 2013; and June 3 through August 24, 2013) had overlapped the petitioner's overpayment period, I would have directed the Department to subtract [REDACTED]'s payments against its overpayment from the amount owed by Ms. [REDACTED], to avoid a duplicate repayment to the Department. However, the periods do not overlap, so I cannot reduce the petitioner's amount owed.

The petitioner may have been harmed by misbehavior by [REDACTED]. However, she would have avoided this harm if she had reported her [REDACTED] job loss to the agency within 10 days. The agency would then have changed her enrollment-based authorization to an attendance-based authorization with just enough hours to cover the part-time [REDACTED] employment, and [REDACTED] would have been unable to submit full-time billings to the Department.

As noted above, the petitioner was required to timely report (within 10 days) any job loss, and she did not do so. *Manual*, 1.15.1. Therefore, the overpayment here was caused by client error, and is recoverable.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner was overpaid CC from September 13, 2013 through November 23, 2013.

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 Madison,
Wisconsin, this 10th day of March, 2015

\sNancy J. Gagnon
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 March 10, 2015.

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