



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/162149

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Fond du Lac County Dept. of Social Services to recover child care assistance, a hearing was held on February 19, 2015, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on February 3, 2015.

The issue for determination is whether petitioner was overpaid child care assistance because she did not report an increase in income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deborah Bohlman
Fond du Lac County Dept. of Social Services
50 N. Portland St.
Fond du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. In 2013 petitioner received child care assistance for her two children. She had a review in April, 2013, and her monthly income from her job was reported to be \$1,044.90. She was found to be eligible for child care and an authorization was issued for the period April 7 through August 31, 2013.

3. A review was done in September, 2013, and child care eligibility was determined based upon monthly income of \$1,625. An authorization was issued for the period September 1, 2013 through March 29, 2014.
4. A state wage match in 2014 showed that petitioner's income was higher in 2013 than was budgeted. The county obtained petitioner's actual income from her two employers during 2013. Petitioner's actual income in April, 2013 was more than \$250 higher than the \$1,044 budgeted, and it continued to be higher subsequently. In August through December, 2013, petitioner's income from her new job also was more than \$250 higher than the \$1,625 that was budgeted.
5. By a notice dated November 3, 2014, the county informed petitioner that she was overpaid \$1,081.56 in child care assistance from May through December, 2013, claim no. [REDACTED].

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.

The Department's Child Care Policy Manual sets out policies for operating the program. With regard to income, the Manual at §1.15.2 requires a participant to report changes in monthly income if it increases by \$250 or decreases by \$100. As soon as petitioner realized that her monthly income was more than \$250 higher than \$1,044 in the spring, 2013, she should have reported it. Her child care would have been adjusted.

Petitioner testified that she did not report higher income because she never expected to receive higher income. She kept being called in to work extra hours by the employer because other staff would miss work or quit, and then the employer would bring on new staff so it would appear that petitioner's hours would be reduced again, only for the same cycle to happen again. Nevertheless, petitioner would have been better served to report the changes because the increased income was not just a short term occurrence. Petitioner's income was higher than budgeted in every month after April, 2013 except July, which is the month she switched jobs.

Petitioner did not dispute the calculations, and I find no error in them. I conclude that the overpayment was calculated correctly.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid child care because she did not report increases in her income.

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 23rd day of February, 2015

\sBrian C. Schneider
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 February 23, 2015.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud