



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/162618

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services in regard to Child Care, a telephonic hearing was held on January 20, 2015, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for one week for petitioner to submit evidence to establish her residence in Brown County during the overpayment period in question, and then one week for a responsive closing argument by the county agency to DHA. Both parties submitted their closing statements to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly seeking to recover from petitioner a child care overpayment in the amount of \$2,741.73 from the period of April 1, 2014 to June 30, 2014, due to petitioner's failure to verify her residence in Brown County.

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, Room G200
Madison, Wisconsin 53703

By: Diane Van Asten, fraud investigator
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
[REDACTED], WI 54301

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County with her two children.
2. The petitioner's child care case was transferred from Milwaukee County to Brown County on or about March 28, 2014.
3. During her April 4, 2014 child care interview, petitioner informed the Brown county agency that she was living in [REDACTED], but commutes to Milwaukee to work about 3 times per week.
4. The county agency sent an April 7, 2014 Request for verification to the petitioner requesting verification of the address of her residence in [REDACTED] at which she and her two children reside. See Exhibit 4.
5. On April 9, 2014, the agency received verification from petitioner that her residence was [REDACTED].
6. Based upon that verification, on April 21, 2014, the agency approved child care authorizations for petitioner's two children at [REDACTED] in Milwaukee.
7. Based upon new evidence, the agency child care agency questioned whether petitioner actually resided in Brown County and investigated further.
8. On August 1, 2014, the county agency sent a Landlord Information Request to Mr. [REDACTED] to confirm whether or not petitioner resided as a tenant at [REDACTED].
9. On August 5, 2014, the agency received Mr. [REDACTED]'s response which stated: This person has never lived or rented at this property at any time." See Exhibit 3.
10. The county agency sent an August 6, 2014 Notice of Proof Needed to the petitioner requesting verification of her living arrangement, residence, household composition and financial information by August 15, 2014. See Exhibit 5.
11. Petitioner failed to provide the requested verification to the county agency by August 15, 2014, and the petitioner's child care benefits were discontinued.
12. On September 16, 2015, the agency transferred the petitioner's case to Milwaukee County.
13. The Brown County agency sent an October 30, 2014 Child Care Overpayment notice to the petitioner stating that she received a child care overpayment of \$2,741.37 from the period of April 1, 2014 to June 30, 2014, due to her failure to provide accurate residence or household composition information. See Exhibit 1. The overpayment was calculated from April 20, 2014 to June 21, 2014, based upon a total overpayment due to petitioner's failure to verify her residence in Brown County, as detailed in the attached child care overpayment worksheet. Exhibit 1.

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

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, § 15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, § 2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, § DCF 101.26(1).

In this case, the county agency correctly argued that petitioner's failure to provide accurate verification of her Brown County residence was a violation of her continued eligibility for child care benefits.

The Child Day Care Manual provides the following regarding **Missing Verification**:

If verification has not been received from the applicant within seven (7) business days, the agency should code the missing verification item as "Not Verified" in Cares Worker Web (CWW) and run eligibility. This will generate a **Denial Notice** alerting the applicant the case is being denied pending the receipt of the missing verification.

Child Care Manual, 1.3.4 "Missing Verification."

During the January 20, 2015 hearing and in its written closing argument while the record was open, the county agency representative presented a well-organized and documented case to support the child care overpayment. The county agency sent two verification requests to the petitioner requesting reliable verification of her address of residence in Brown County. See Findings of Fact #4 and #10 above. Petitioner failed provide the requested non-financial information. See WI Stat § 49.155(1m) (a)1-5 and the Child Care Manual, Chapter 2, sec. 2.2.0, "Nonfinancial Eligibility," and the Child Care Manual, 1.3.4 "Missing Verification." As a result, the county agency correctly sent an October 30, 2014 Child Care Overpayment notice to the petitioner stating that petitioner received a child care overpayment of \$2,741.37 from the period of April 1, 2014 to June 30, 2014, due to failure to provide accurate residence or household composition information. See Exhibit 1.

During the hearing, petitioner was argumentative, but was unable to provide any credible testimony that she timely verified her required Brown County address to the county agency. The landlord confirmed that petitioner never resided at the address that petitioner had provided to the agency. Finding of Fact #8 above. In her written closing argument while the record was held open, petitioner provided in part a statement which further undermined her weak credibility during the hearing: "I was never on the lease at 1223 S. Norwood but I did live there without the landlord knowing." Petitioner failed to provide any reliable evidence of her Brown County address, and her testimony was generally vague and unreliable.

The petitioner was also unable to refute the county agency's case or the correctness of its calculation of her child care overpayment of \$2,741.37 during the period in question. The petitioner was not eligible for child care payments during the period that she failed to provide required verification of her Wisconsin residence.

The Department is required to recover all overpayments of public assistance benefits pursuant to Wis. Stat. § 49.195(3), 45 C.F.R. § 233.20(a)(13)(I). Child care assistance is no exception. Child Care Manual, Ch. 1, § 10.3.0. Accordingly, for the above reasons, the county agency correctly determined that

the petitioner was not eligible for childcare benefits during the period of April, 2014 through June, 2014, due to petitioner’s failure to verify her residence in Brown County.

CONCLUSIONS OF LAW

1. The county agency has correctly determined that the petitioner was not eligible for childcare benefits for April, 2014 through June, 2014, due to petitioner’s failure to verify her residence in Brown County.
2. The Department correctly seeks to recover from the petitioner the amount of \$2,741.73 from the period of April 1, 2014 to June 30, 2014, due to petitioner’s failure to verify her residence in Brown County resulting in overpaid child care assistance.

THEREFORE, it is ORDERED

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, Room G200, 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 April, 2015

\sGary M. Wolkstein
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 April 23, 2015.

Brown County Human Services
Public Assistance Collection Unit
Child Care Fraud