



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/162948

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 31, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Capital Consortium to recover child care assistance, a hearing was held on April 16, 2015, by telephone. Hearings set for January 28, February 11, and March 11, 2015 were rescheduled at the petitioner’s request.

The issue for determination is whether the agency correctly determined a child care overpayment due to inaccurate household members and income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Dane County Dept. of Human Services  
1819 Aberg Avenue, Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. Petitioner resides with her boyfriend M.P., their daughter A.P., and her older daughter K.S. In December, 2010 petitioner applied for Food Share (FS), Medical Assistance (MA), and child care. Child care was denied because M.P. was listed as unemployed. FS and MA were granted, but FS closed effective February 1, 2011 because income was over the limit.

3. Petitioner reapplied for FS on February 15, 2011, reporting that M.P. was out of the home. FS reopened. Petitioner requested child care in April, 2011. Child care opened.
4. In August, 2011, petitioner and M.P. stipulated in A.P.'s paternity case that M.P. was the father. Petitioner and M.P. were listed at separate addresses, but M.P. was not ordered to pay child support because he was reported to be unemployed.
5. In all other transactions except the paternity case, M.P. used petitioner's [REDACTED] address as his address. Those transactions included motor vehicle registrations, voting, employment with two recorded employers, and police contacts.
6. The children began to attend day care in April, 2011 (A.P. started April 14, and K.S. started May 6). M.P.'s address on the day care application was a post office box, but he was listed as the children's father/guardian and petitioner's fiancé, and he regularly picked up/dropped off, and had regular contact with the provider about the care and payment for the services. The provider believed that petitioner and M.P. lived together.
7. In January, 2012, a domestic disturbance occurred at approximately 4:00 a.m. between petitioner and M.P. Petitioner told a sheriff's deputy that she and M.P. had been living together for some time. Local police believe that petitioner and M.P. have lived together regularly since 2010.
8. The [REDACTED] home is owned by M.P.'s father. During the period when M.P. allegedly lived outside of petitioner's home he allegedly lived with his parents or unnamed friends.
9. The children's last day at the day care was December 28, 2012. Petitioner's child care assistance closed effective January 1, 2013. On January 7, 2013, petitioner reported to the economic support agency that M.P. moved back into the home.
10. After an investigation the agency determined that M.P. lived with petitioner throughout 2011 and 2012. The agency thereafter attempted to obtain M.P.'s employment and income information for the period January, 2011 through the present. With exception of the two recorded jobs with [REDACTED] and [REDACTED], no response was received. M.P. refused to provide tax returns for the period and refused to sign a statement saying that he did not file tax returns.
11. By notices dated November 2, 2014, the agency informed petitioner that she was overpaid a total of \$15,841.01 in childcare assistance during the period April, 2011 through December 31, 2012, claim nos. [REDACTED] and [REDACTED]. The claim was for all child care paid during that period; because petitioner and M.P. provided no information about M.P.'s employment and income, the agency could not determine whether the household was eligible for any assistance. M.P. was listed as a liable party and also received overpayment notices.

### 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.

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); Child Day Care Manual, §§1.4.8 and 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

Child care assistance groups include parents and their children, non-marital co-parents, and spouses. Manual, §1.3.8. The income limit for child care is 185% of the federal poverty level (FPL) for a new application and 200% of the FPL for an ongoing case.

Under child care assistance policy, if petitioner and M.P. live with their child in common, they must be included together in the assistance household. As such, M.P.'s employment and income information must be provided so proper benefits can be determined. It is undisputed that M.P. lived with petitioner in 2013 and 2014, yet he has provided no response concerning his income. The agency has asked for something as simple as a statement that he did not file income tax returns, and he has refused to provide anything.

The first issue is whether the couple lived together in 2011 and 2012. I conclude that the evidence shows that at best they might have been separated briefly, but that they remained a household for the vast majority of the time if not the whole time. The obvious indications are that M.P. always used the [REDACTED] address as his address for business and legal transactions, that he had no verifiable alternative residence, and that both the day care provider and the local police believed they lived together. Petitioner reported to the police in January, 2012 that they were living together, verified in part by the fact that a domestic disturbance occurred in the early morning hours of January 9.

There are other subtle indications. For example, petitioner reported that M.P. was out of the household almost immediately after her benefits case closed and almost immediately before she reapplied for child care, when child care had been denied before because of M.P.'s unemployment. Then, after the children stopped attending child care in late December, 2012, petitioner immediately reported that M.P. was back in the household; at that point his employment status no longer affected child care assistance eligibility.

The only evidence that M.P. ever was out of the house is from petitioner's and M.P.'s self-serving testimony, written statements from their parents, who would be motivated to protect their interests, copies of undated envelopes sent to M.P. at his father's home, copies of a life insurance policy that likely predated M.P.'s move from his father's home, a snowmobile registration from prior to 2011, and the paternity stipulation and order from August, 2011. I have marked petitioner's exhibits as a package, Exhibit P-1. I initially thought that the paternity stipulation at least provided some bit of legitimate verification that they were apart, but given that M.P. was not ordered to pay child support, they would have had no reason to report living together then, especially knowing that living together could have affected at least the child care assistance. In addition, the address provided by M.P. to the paternity court again was his father's address.

The second issue is the finding that all benefits child care assistance paid on petitioner's behalf was an overpayment. If he was unemployed there would have been no eligibility. On the other hand, there is evidence that M.P. was working during this period, apparently for friends and possibly for cash. Of particular note is the April 10, 2012 case note from M.P.'s criminal case in which he asks permission to travel to [REDACTED] for employment purposes from April 11 to April 15, 2012. Exhibit G, page 3. Petitioner stated at this hearing that M.P. asked for permission just in case he maybe, might have the opportunity to work. That is absolutely unbelievable. On April 10 he asks to leave the next day for work he might not actually have? M.P. has never provided any record of income from the trip to [REDACTED].

The agency has every right to request information about M.P.'s employment and income, especially in light of the credible suspicions that this couple has been deliberately cheating the system to obtain benefits. Given that the agency has received no response, it is justified in assuming that the household would not have been eligible for any benefits during the period in question. I thus will affirm the overpayment claim.

### **CONCLUSIONS OF LAW**

The agency correctly determined child care overpayments based upon reporting the household composition accurately and refusing to provide income information concerning a household member.

**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, 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 30th day of April, 2015

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\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 April 30, 2015.

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