



FH

Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CCO/163937

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephonic hearing was held on March 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (MES) is correctly seeking recovery of a child care overpayment in the amount of \$1,062.46 during the period of June 29, 2014 to July 31, 2014, due to petitioner's failure to complete her required W-2 assigned employment search during that period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, child care specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # **Redact**) is a resident of Milwaukee County who resides in a household of five with her four minor children.
2. The petitioner's employment for **Redact** ended on or about June 20, 2014. She had been employed from November 12, 2012 until June 20, 2014.
3. The petitioner applied for W-2 benefits including child care benefits on or about June 27, 2014. During that appointment, petitioner signed her Employability Plan (EP) which stated in part that petitioner was required to participate in 20 hours per week of employment search.
4. The W-2 agency placed petitioner in the CSJ level, and assigned the petitioner to complete 20 hours per week (4 hours per day) of Employment search.
5. During her July 15, 2014 W-2 follow-up appointment, petitioner was unable to document (or turn in any job logs) that she had participated in any employment search during the period of June 29, 2014 through July 12, 2014. Exhibit F, page 27.
6. The petitioner received Child Care benefits for her four children during the period of June 29, 2014 to July 31, 2014, but failed to complete her assigned employment search during that period.
7. The Milwaukee Enrollment Services (MES) paid child care benefits for petitioner's four children to petitioner's child care provider in the total amount of \$1,062.46 during the period of June 29, 2014 to July 31, 2014 (June, 2014 - \$489.77; and July, 2014 - \$572.69).
8. The W-2 agency sent a July 16, 2014 Notice to the petitioner stating that her W-2 eligibility was denied during the period of June 27, 2014 due to her failure to complete her assigned up-front activity requirements.
9. On January 12, 2015, the Department of Children and Families (DCF) issued a Child Care Overpayment Notice to the petitioner in claim # **Redact**, advising that she had been overpaid child care in the amount of \$1,062.46 during the period of June 29 2014 to July 31, 2014. The basis for the child care overpayment was that petitioner was not employed, failed to complete her required W-2 assigned employment search, and was not participating in any approved W-2 activity during that period while continuing to use child care for her four children. The petitioner timely appealed that overpayment notice.
10. During the hearing, petitioner was unable to establish with any reliable evidence that she was participating in approved W-2 activities or employed during the overpayment period of June 29, 2014 to July 31, 2014.

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 and the Child Day Care Manual, Chapter 2, §2.3.1. 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.

During the March 5, 2015 hearing, the petitioner alleged unconvincingly and in vague terms that she did turn in her employment search log sheets to the Department during the period in question. However, the petitioner was unable to provide any documentation or corroboration of such submission of her employment search job logs.

In this case, the hearing record is clear that petitioner signed her Employability Plan on June 27, 2014 which required her to complete 20 hours of job search each week. The DCF representative testified persuasively and with reliable exhibits that petitioner did not complete any employment job search during the period of June 29, 2014 through July 31, 2014. The petitioner was unable to refute that testimony or evidence. Accordingly, based upon the above, I conclude that the Department correctly determined that the petitioner was overpaid child care in the amount of \$1,062.46 during the period of June 29, 2014 to July 31, 2014, due to petitioner's failure to complete her required W-2 assigned employment search during that period.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) is correctly seeking recovery of a child care overpayment in the amount of \$1,062.46 during the period of June 29, 2014 to July 31, 2014, due to petitioner's failure to complete her required W-2 assigned employment search during that period.

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 1st day of June, 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 June 1, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud