



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/163953

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover child care assistance, a hearing was held on March 25, 2015, by telephone.

The issue for determination is whether petitioner was overpaid child care assistance because the county agency incorrectly classified her children as being on an enrollment basis instead of attendance basis.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Donahue
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received child care assistance for her two children in the July, 2014. She previously received child care on an attendance basis but had a break for maternity. She is on a 50-50 shared placement arrangement with the children’s father. She has the children every week Monday through Wednesday afternoon, and he has them Wednesday afternoon through Friday. They alternate weekends. The father does not receive child care assistance.

3. In July the county classified petitioner's children as being on an enrollment basis of 35 hours per week, and the child care provider thus was paid for all scheduled hours instead of for actual attendance hours.
4. During a State Quality Review the reviewer noted that the county agency erred by putting the children on enrollment rather than an attendance basis. The county thereafter processed an overpayment claim.
5. By a notice dated February 3, 2015, the county informed petitioner that she was overpaid \$994.65 in assistance from July 1 through September 30, 2014 due to agency error, claim no. [REDACTED]. The overpayment was determined by comparing the amount of assistance that would have been paid if the children were attendance-based and subtracting that amount from the total assistance paid on the enrollment basis.

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.

If a child is enrolled as an enrollment-based child care student, the provider is paid for the child's scheduled hours regardless of the hours actually attended. If the child is attendance-based the provider is paid only for hours actually attended. Child Care Policy Manual, §§3.6.7 and 3.6.9. In this case the State Quality reviewer noted that because petitioner had a shared placement arrangement with the children's father, the children had to put on an attendance-based authorization, and thus extra payments made on the enrollment-based authorization were overpaid.

The Manual, §3.9.2, provides: "In shared placement cases, where only one parent receives child care subsidy, the authorization should be based on attendance. The provider should be instructed to enter attendance only for the hours when the child was in day care and in the custody of the parent eligible for subsidy."

It is evident that the agency erred in making the authorization enrollment-based. A review of the county case notes show clearly that the previous authorization was attendance-based, but a new worker was given petitioner's case in July and entered the authorization as enrollment-based for what appeared to be too many hours since petitioner worked only 4 days per week, with at least part of her work week on days when the children were with their father.

The child care assistance statute requires all overpayments to be recovered, even in cases where the error was made by the agency. I thus must conclude that the overpayment was determined correctly.

CONCLUSIONS OF LAW

The county correctly determined a child care overpayment caused by a county worker incorrectly authorizing petitioner's children to receive 35 hours per week child care on an enrollment basis instead of the correct attendance basis.

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 27th day of March, 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 March 27, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud