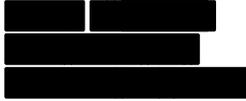




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/164231

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on March 18, 2015, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid CC benefits for the April through December 2014 period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Megan Thurston, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Dane County.
2. The petitioner received CC subsidy benefits as a household of two persons from at least December 2013 through December 2014.

3. On February 19, 2015, a *CC Client Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$2,816.72 in CC for the 4/1/14 – 12/31/14 period (claim # [REDACTED]). Exhibits 13, 15. The overpayment was due to combined worker/client error from April through June, and solely client error for under-reporting income from July 2014 forward.
4. The petitioner worked at [REDACTED] from at least December 2013 forward throughout the overpayment period. She was required to report earnings increases above a set threshold within 10 days of occurrence. The Department notified the petitioner of this requirement repeatedly in standard notices. *E.g.*, Exhibit 12, *Notice* dated 1/6/2014, p.1, and Exhibit 8B, p.7. She did not report exceeding the threshold at any time in December 2013 or during 2014.
5. In conjunction with a December 2013 Six Month Report Form, the petitioner submitted paystubs correctly showing her hourly rate of pay as \$13.00. An agency worker incorrectly entered her hourly wage as \$10.50. However, the petitioner also erred at that time, because she did not mention her bonus checks. The petitioner's case underwent an annual review on May 20, 2014, at which time verification of her last 30 days' pay was requested. The petitioner submitted three paystubs, and the agency worker correctly entered the hourly rate of \$13.00, times 40 hours weekly. However, the petitioner did not submit two bonus checks received during the requested period, making the overpayment completely client error from that point forward.
6. The agency learned of the petitioner's excess 2014 income when it received an employer wage match report from the Wisconsin Department of Workforce Development in 2014. When the petitioner's correct earnings amounts were entered in the CC case, the results were that she should have received zero CC benefits (instead of the issued \$150 to \$410.69 monthly) from April through December 2014.

DISCUSSION

I. JURISDICTION.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.1.5.3. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This policy provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. If the overpayment error was exclusively caused by the agency, the agency cannot create an overpayment period that extends back more than 12 months from the overpayment notice date.

In this case, the petitioner does not contest several things. She does not quarrel with the agency's arithmetic in the overpayment calculation, and she does not contest that she received the pay as identified

in Finding #5, plus bonus checks. The petitioner did not produce any evidence to suggest that the income information received by the county agency from the employer was incorrect.

Rather, the petitioner explained that she only looked at the hourly rate on her two review-confirming notices from the Department, so she thought that she was reporting adequately. She stated that she did not multiply out her hourly wages to see if they matched the gross wage totals declared on the multiple benefit notices that she received. That is not a persuasive explanation.

The county agency submitted documentation of all of the income amounts that were used in its computations. The petitioner was required to timely report (within 10 days) any pay increase above the reporting threshold identified on her periodic renewal document, and she did not do so. *Manual*, 1.15.1. Therefore, there was an overpayment here and it is recoverable.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner was overpaid CC from 4/1/14 through 12/31/14.

THEREFORE, it is

ORDERED

That the petition is 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 31st day of March, 2015

\sNancy J. Gagnon
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 March 31, 2015.

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