



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/164414

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 04, 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 hearing was held on March 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals jurisdiction in this matter.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Shawnte Julien

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Milwaukee County.
2. On February 13, 2015 the agency sent the petitioner a notice of child care overpayment. The overpayment period was from January 5, 2014 through June 30, 2014. The total amount of the

overpayment was \$3,972.31. This overpayment was the result of the petitioner failing to report that her husband was living with her.

3. The petitioner's husband lived with her during the overpayment period. The husband's income should have been included in the monthly household gross income. He worked for Milwaukee County as a correctional officer.
4. The household's gross income during the overpayment period was as follows:
  - a. January 2014 - \$3,298.00
  - b. February 2014 - \$4,975.18
  - c. March 2014 - \$4,018.60
  - d. April 2014 - \$3,123.80
  - e. May 2014 - \$3,288.98
  - f. June 2014 - \$3,784.82
5. The household was not eligible for child care assistance in January, February, March, May, and June 2014. The household was eligible for a reduced amount of child care assistance in April 2014.
6. The total child care overpayment of \$3,972.31 is calculated as follows:
  - a. January 2014 - \$760.38
  - b. February 2014 - \$760.38
  - c. March 2014 - \$953.23
  - d. April 2014 - \$238.02 (agency paid \$726.47, but the household was eligible for \$488.45)
  - e. May 2014 - \$657.80
  - f. June 2014 - \$602.50
7. On April 30, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### DISCUSSION

There is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning a W-2 child care overpayment is untimely if it is not filed within 45 days. Wis. Admin. Code § DWD 12.23(2)(d) (November 2006) & Wis. Admin. Code § HA 3.05(3); See also, Wis. Stat. §§ 49.155 & 49.195(3); DHA Case No. CCB-40/63026 (Wis. Div. Hearings & Appeals Proposed Decision August 10, 2004; Final Decision September 22, 2004) (DWD); and, DHA Case No. CCB-30/63517 (Wis. Div. Hearings & Appeals Proposed Decision September 9, 2004; Final Decision December 30, 2004) (DWD). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

The Division of Hearings and Appeals does not have jurisdiction in this case because the petitioner's appeal was not timely filed. The effective date on the notice is February 12, 2015. There is an additional notice dated February 13, 2015. The petitioner did not file her request for fair hearing until April 30, 2015. The latest possible day to file her appeal was March 30, 2015. Thus, I do not have jurisdiction to decide this case.

Even if I had jurisdiction to decide this case, I would find that the agency correctly seeks recovery of the overpayment. 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*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.* 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*, §2.3.1. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed May 2015).

The burden of proof falls upon the county agency when seeking to recover benefits pursuant to State v. Hanson, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). The county is required to promptly seek recovery of overpayments made under the W-2 Child Care Benefit program. Wis. Stats. §49.195. The county must prove its case by a preponderance of the evidence. Wis. Admin. Code §HA 3.09(4).

The only issue with regard to the overpayment is whether the petitioner was living with her husband. The evidence shows that the petitioner and her husband were living together from January 5, 2014 to June 30, 2014. On April 17, 2014 the petitioner reported to a W-2 worker that she was living with her husband. When she learned that she was ineligible for W-2 benefits due to her husband's income, she stated that he did not live her. She later decided not pursue that application. The petitioner reported during a family court proceeding in June 2014 that she was living with her husband. Since March 29, 2013 the petitioner and her husband have remained on the same lease. In addition, both the petitioner's and her husband's paystubs list that apartment address.

I do not find the petitioner's testimony credible. There is no evidence to corroborate her testimony. She did not present any documentation showing that she was not residing with her husband during the overpayment period. She has presented conflicting information throughout this case. She only admitted that she resided with her husband in June 2014 after the agency told her she reported that in June 2014 family court proceeding. When she contacted the agency after receiving the overpayment notice, she could not provide a timeframe of when she lived with her husband. The agency presented several paystubs, a lease, and records of conflicting information the petitioner has given to various agencies. The agency would have met their burden in this case.

### CONCLUSIONS OF LAW

The petitioner's appeal is not timely, and therefore the Division of Hearings and Appeals does not have jurisdiction.

**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, 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 Milwaukee,  
Wisconsin, this 22nd day of May, 2015

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\sCorinne Balter  
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 May 22, 2015.

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