



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/164897

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 24, 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 April 16, 2015.

The issue for determination is whether the agency has established an overpayment of child care benefits (CCB) against the petitioner for the time period of January-September 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Glenetta Rucker, DCF Program Supervisor  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. From at least December 8, 2013 -September 28, 2014 petitioner received CCB. See Exhibit 7, p 53-63.

3. On December 11, 2013 petitioner reported to the agency that she began working with [REDACTED] Inc. See Exhibit 7, p 68; see also Exhibit 1, p.46.
4. On January 1, 2014 petitioner completed a renewal for CCB. See Exhibit 7, p 74. She again reported her employment with [REDACTED]. *Id.* at p. 78.
5. On January 8, 2014 petitioner signed her renewal summary agreeing to the statements therein, which included her employment with [REDACTED]. *Id.* at p. 100.
6. Petitioner's employment ended with [REDACTED] on January 5, 2014. See Exhibit 7, p. 105. She reported that end of employment to the agency on June 2, 2014. *Id.*
7. On June 2, 2014 petitioner also reported that she began working with the [REDACTED] on January 29, 2014. *Id.* Petitioner thereafter provided two employment verification forms (EVFEs) to show her employment at the [REDACTED]. Exhibit 1, p.47-48. One EVFE states that her employment began there on 1/13/13, and one states her employment began on 1/29/14. *Id.*
8. Petitioner was not employed by the [REDACTED] during the overpayment period.
9. Petitioner asserts that she was employed by [REDACTED] for a portion of the overpayment period and that her physical location for that job was at the [REDACTED]. See Exhibit 4.
10. In July 2014 petitioner went on maternity leave. She was not employed nor participating in any approved activity for W-2 between July and September 2014.
11. On or about September 25, 2015 the agency discovered that petitioner was continuing to utilize her CCB when she was not employed nor participating in any approved activity for W-2 between July and September 2014. The agency then referred the matter for an overpayment of CCB.
12. On March 6, 2015 the agency issued a notice of overpayment to the petitioner stating that she was overpaid \$22,919.10 in CCB for the time period of January 5, 2014 – September 28, 2014 because she misrepresented or failed to report a change in household income, misrepresented or failed to report a change in the number of work hours, and that this was due to an intentional program violation. See Exhibit 5.

### DISCUSSION

The applicable overpayment rule requires recovery of the overpayment, regardless of whether it was the fault of the client or the agency. Wis. Admin. Code §DCF 201.04(5)(a); see also Wis. Stat. §49.195(3). Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. Here, the agency asserts it is client error due to an intentional program violation.

Intentional program violation means an individual who is a member of a W-2 or AFDC group intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts that resulted in an overpayment under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats. An intentional program violation may be determined based on an administrative hearing, a court finding, a signed waiver of an administrative hearing for an alleged intentional program violation, or a consent agreement in lieu of prosecution based on the same facts or events as the intentional program violation.

Wis. Admin. Code §DCF 101.23(1)(f).

The agency alleges that petitioner committed an intentional program violation (IPV) by failing to timely report the end of her job at [REDACTED], failing to timely report the start of her job with [REDACTED], and also by providing false EVFEs that show her as employed with [REDACTED]. The agency requires that beneficiaries of CCB report changes that affect their eligibility:

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

*Wisconsin Shares Child Care Assistance Manual (Manual)*, Chapter 1, §1.15.1, available online at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_1/chapter1.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1.pdf).

Examples of some of the information that parents are required to report include:

- A change in the scheduled approved activity hours
- A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.
- A change in approved activity status (starting or ending an activity)
- A change in their Assistance Group composition.

*Manual*, Chapter 1, §1.15.2.

Petitioner did not dispute the failure to timely report her end of job with [REDACTED], or the start of job with the [REDACTED]. Her argument at hearing was that she listed [REDACTED] as her employer because that was physically where she worked, although her true employer was [REDACTED]. She testified that [REDACTED] had a contract to clean the [REDACTED]. She also provided two checks issued to her by "[REDACTED] [REDACTED]". See *Exhibit 4*. The checks are not the regular type of payroll checks, indeed the only identifier of the issuer is "[REDACTED] [REDACTED]". There is no address or telephone information on the check and one cannot tell from the check itself if petitioner ever cashed it. Even if the authenticity of the checks were not in question, the memo notes on the checks only cover the time periods of 2/1/14-2/14/14 and 3/1/14-3/14/14. This does not support a finding that she was employed sufficiently to have been continuing the CCB as it was issued.

Additionally, petitioner only advised the agency that she was employed with [REDACTED] after she received the notice of overpayment in March 2015. The agency attempted to contact [REDACTED] from the telephone numbers provided on the EVFEs, but no one ever answered the phone. The agency attempted to contact the [REDACTED] in question, but it was closed down. The only verification the agency could get was that petitioner was never employed with the [REDACTED]. See *Exhibit 1*, p.49-50. According to the petitioner, the EVFEs were signed by the owners of [REDACTED] [REDACTED]. This is curious seeing that the employer is listed as the [REDACTED]. Even if I believe petitioner's version that *she* listed the employer as [REDACTED] due to it being her physical work location, I find it curious that *the signers* listed themselves as "CEO" and "Supervisor" when the employer is listed as "[REDACTED]".

I also find it difficult to believe she would not know to report her change in employment in January based on all of the notices and her acknowledgment of her duties to report. See e.g., *Exhibit 7*, p. 70, 73, 79, 86, 96, 100, 129, 133, 142, 147. Perhaps most detrimental to her case is that when she came into the agency on January 8, she signed her renewal summary agreeing to the statements therein, which stated that she was employed with [REDACTED]. This would have been 3 days after that employment ended. There was also a notice issued to her on January 9, 2014 showing that the agency was still budgeting her income from [REDACTED]. See *Exhibit 7*, p. 133.

Moreover, if the information on the EVFE for the [REDACTED] [REDACTED] is true, then she also should have known that her hours and pay were decreasing with the [REDACTED] [REDACTED] employment. See (*Exhibit 1*, p. 47 vs. p. 46). This would more than likely change her needed hours for child care, but yet there was no report of the change. Additionally, petitioner continued to utilize child care after her job ended January 5, 2014. Again, if the information on the EVFE for the [REDACTED] [REDACTED] is true, then she was not working at all between January 6-28, and there is no evidence to show that she would

have been eligible for CCB during that time. This is also true for the period of time between July and September when she was not working after her maternity leave and not in an approved activity. Finally, even if I believed that petitioner was working for [REDACTED] with the hours necessary to have received the child care benefits issued to her, there is no evidence that [REDACTED] was a qualified employer.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. The agency further asserts that the lack of qualified employment with [REDACTED] makes petitioner ineligible for the CCB. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

**(1m) ELIGIBILITY.** A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and *child care services for that child are needed in order for the individual to do any of the following:*
1. Meet the school attendance requirement under s. [49.26 \(1\) \(ge\)](#).
  - 1m. Obtain a high school diploma or participate in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation, if the individual is not subject to the school attendance requirement under s. [49.26 \(1\) \(ge\)](#) and at least one of the following conditions is met:
    - a. The individual is 18 or 19 years of age.
    - b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. [48.57 \(3m\)](#) or with a long-term kinship care relative under s. [48.57 \(3n\)](#) or is in a foster home licensed under s. [48.62](#), a subsidized guardianship home under s. [48.623](#), a group home, or an independent living arrangement supervised by an adult.
  2. **Work in an unsubsidized job**, including training provided by an employer during the regular hours of employment.
  3. Work in a Wisconsin works employment position, including participation in job search, orientation and training activities under s. [49.147 \(2\) \(a\)](#) and in education or training activities under s. [49.147 \(3\) \(am\)](#), [\(4\) \(am\)](#) or [\(5\) \(bm\)](#).
  - 3m. Participate in a job search or work experience component of the food stamp employment and training program under s. [49.79 \(9\)](#).
  4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education, including an English as a 2nd language course; literacy tutoring; or a course of study meeting the standards established by the state superintendent of public instruction under s. [115.29 \(4\)](#) for the granting of a declaration of equivalency of high school graduation. An individual may receive aid under this subdivision for up to 2 years.
  5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat. §49.155(1m)(a)(**emphasis added**). See, in accord, Wis. Admin. Code §DCF 201.04(2g)(d).

The definition of “unsubsidized employment” means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities. See

Wis. Admin. Code §DCF 101.03(35); Wis. Stat. §49.197(1). The *Manual* states that only two types of unsubsidized employment can create nonfinancial eligibility: (1) self-employment or (2) “working for a qualified employer who has a Federal Employer Identification Number (FEIN).” *Manual*, §1.5.3. (There was no dispute that the petitioner was not self-employed and no evidence to show that the employer [REDACTED] had a FEIN. Petitioner agreed that her paycheck from [REDACTED] did not have taxes withheld, and there is no showing that her wages were reported to the State of Wisconsin.) The *Manual* then goes on to further define “qualified employers” and the requirement of the FEIN. See *Manual* at §1.5.3.1. The end result here, however, is that having a FEIN is a requirement to show that the employer is legitimate and to harmonize itself with Wisconsin Wage and Unemployment laws. Without a FEIN, or some showing that this employer was a qualified employer, the overpayment would still stand. See *DHA Final Decision*, Case No. CCO/145434 (August 22, 2013). To be clear, there was no showing that this employer is the [REDACTED] one could locate at [REDACTED]. If it were a company as large as described on this website, then getting petitioner’s information from an employer of that size should not be difficult.

The petitioner did not contest that she took her children to day care during the identified period, and she did not quarrel with the agency’s arithmetic in the overpayment calculation. Based on all of the foregoing, I conclude that the agency has established an overpayment of child care benefits against the petitioner for the time period of January-September 2014 in the amount of \$22,919.10 due to an intentional program violation.

### CONCLUSIONS OF LAW

The agency has established an overpayment of child care benefits against the petitioner for the time period of January-September 2014 in the amount of \$22,919.10 due to an intentional program violation.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be 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 23rd day of June, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 23, 2015.

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