



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

LVO/165222

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Red Cliff Tribal Agency in regard to Child Care Benefits, a hearing was held on May 11, 2015, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Child Care Benefits

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

Red Cliff Tribal Agency
88385 Pike Road
Hwy 13
Bayfield, WI 54814

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Ashland County.
2. The petitioner was an ongoing recipient of Child Care Benefits that were paid on behalf of his three children.

3. As of May 2013, the tribe increased the petitioner's child care hours from 10 to 35 hours per week.
4. The tribe never told the petitioner that it had increased his child care hours. He continued to use 10 hours a week for his three children.
5. The tribe paid the petitioner's child care provider for 35 hours of care each week for his children.
6. When the petitioner's child care provider submitted a sheet for payment to the tribe, she indicated, "I understand that I must enter the actual hours of attendance for each child in care on each Child Care Attendance report even if the authorization is based upon enrollment."
7. The tribe seeks to recover \$1,990.22 in Child Care Benefits paid on behalf of the petitioner's children from May through July 2013. This amount represented child care claims that exceeded 10 hours per week during this period.

### **DISCUSSION**

Child Care Benefits are available under Wisconsin Works (W-2) to qualified parents who earn less than 185% of the poverty level. (Those already in the Child Care program must earn less than 200% of the poverty level.) Wis. Stat. § 49.155(1m)(c)1. The department must recover all child care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Admin. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

The petitioner received child care benefits on behalf of his three children in 2013. In May 2013, the tribal agency increased the number of hours allowed for this care from 10 to 35 per week but never told him. Because he did not know that he had more than 10 hours of care per week, that was all that he used. His child care provider was informed that she must only enter on her attendance sheets the actual hours each child attended each week. Nevertheless, from May through July 2013 the agency paid out \$1,990.20 more in benefits than the 10 hours a week entitled the petitioner to. The tribe now seeks to recover this money from the petitioner.

Child care policy instructs agencies, "All reasonable steps should be taken to recover any overpayments made for which the client was responsible or overpayments caused by administrative error that benefited the client." *Day Care Manual*, § 2.1.4.1. In this matter, the petitioner was not responsible for the overpayment because the tribe increased the amount it approved for his child care provider without consulting with him. And he did not benefit from the additional funds given to his child care provider because he continued to take his children there 10 hours per week. Because he did not receive any benefit or payment, nothing in the child care rules and policies allows the agency to attribute any overpayment to him. Therefore, the agency cannot recover from him any of the child care payments his provider received from May through July 2013.

### **CONCLUSIONS OF LAW**

The department cannot recover the \$1,990.22 overpayment of Child Care Benefits made to the petitioner's child care provider from May through July 2013 because the petitioner did not cause the overpayment or receive any benefit from it.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the tribal agency with instructions that within 10 days of the date of this decision it end all attempts to recover \$1,990.22 in Child Care Benefits made to the petitioner's child care provider from May through July 2013 and that it remove any finding of an overpayment from his record.

### **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 8th day of June, 2015

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\sMichael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 8, 2015.

Red Cliff Tribal Agency  
Public Assistance Collection Unit