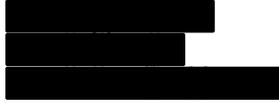




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/165484

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 20, 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 May 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Child Care benefits that occurred because of the agency's error.

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: Glennetta Rucker, DCF Program Supv.  
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 # ) is a resident of Milwaukee County.
2. Petitioner received child care benefits from August 2014-November 2014 in the amount of \$2534.

3. On April 13, 2015 the agency issued a notice of decision to petitioner stating that she was overpaid child care benefits from August 17, 2014-November 30, 2014 in the amount of \$2534 due to agency error in misapplying program policy.

### **DISCUSSION**

Child Care Benefits are provided to working low-income families; working foster parents, kinship care relatives providing care under a court order and receiving kinship care benefits, and subsidized guardians/interim caretakers; and for individuals who are preparing for employment through Wisconsin Works, Food Share Employment and Training Program (FSET), tribal Temporary Assistance for Needy Families (TANF), or in high school and working on their high school diploma.

In this case, the agency admits it authorized petitioner's child care benefits in error and contrary to statute, rule and policy. Wisconsin Statute §49.155(3m)(d)2 provides, "If a child's parent is a child care provider, no funds distributed under par. (a) may be used for child care services that are provided for the child by another child care provider who is not the child's parent." This statutory section was made effective November 15, 2012 and more fully explained in Operations Memo #12-60 Amended. See Exhibit 9.

The petitioner does not challenge the agency's calculations but contends that she should not have to repay the overpayment because it was not her fault and she had no idea about this policy. While I understand her argument, I am bound by child care rules. The statute requires the department to recover all child care overpayments regardless of who is at fault. Wis. Stat. §49.195(3). The Wisconsin Administrative Code, §DCF 101.23(1)(g), explains this in the following way:

"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.

This means that the petitioner is responsible for the overpayment, even if she did not know that the policy would make her ineligible to receive the benefit. Accordingly, I must uphold its decision.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly seeks to recover an overpayment of Child Care benefits that occurred because it erred in authorizing the benefits.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 July, 2015

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\sKelly Cochrane  
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 July 22, 2015.

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