



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

CCO/165922

PRELIMINARY RECITALS

Pursuant to a petition filed May 07, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to Child Care, a hearing was held on June 16, 2015, at Eau Claire, Wisconsin.

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

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: [Redacted]
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Eau Claire County.
2. The petitioner was an ongoing recipient of Child Care Benefits who lost her job on January 21, 2015.

3. The petitioner left a message with her worker on January 23, 2015, to ask what steps she should take in regard to her benefits. No one called her back for about two weeks.
4. The petitioner applied for W-2 benefits on February 2, 2015. She was in either a W-2 approved activity or employment after February 4, 2015.
5. The petitioner's child care benefits were attendance based.
6. The petitioner had to continue sending her child to the same child care provider to maintain her spot there.

### **DISCUSSION**

The petitioner has received Child Care Benefits continuously since before January 21, 2015. These benefits subsidize child care costs for W-2 participants who are working in unsubsidized employment or various approved programs. Wis. Stat. § 49.155(1m)(a). If someone receives benefits she is not entitled to, the Department must recover all overpayments, regardless of who is at fault. Wis. Stat. § 49.195(3). The petitioner lost her job on January 21, 2015, and enrolled in an approved W-2 program by February 5, 2015. The county agency seeks to recover the \$175 in benefits paid on her behalf between these dates.

An overpayment depends upon a change in the recipient's eligibility or her need for child care and whether she reported the change within 10 days. *Day Care Manual*, § 2.1.5.1. If she reports the loss of a job within 10 days, the change is applied five business days later. *Id.* Eligibility ends at the end of the month if the date five days after the change is reported occurs before the adverse action date; it ends after the end of the next month if this date is after the adverse action date. The petitioner testified that she called her worker on January 23, 2015, to ask what steps to take after losing her job but that she did not hear back from the worker for over two weeks. She contends that she is careful about reporting because she had a previous overpayment. I will accept her testimony because she sounded credible and the worker she referred to did not testify, meaning that no one with first-hand knowledge of the situation could dispute the petitioner's testimony.

There is no evidence when the adverse action date for Child Care Benefits occurs each month, but my experience has been that these dates usually occur early in the month. In the petitioner's case, because she reported the change on January 23, 2015, and five days later was January 28, 2015, the adverse action date would have to be after the 28<sup>th</sup> of each month for her benefits to have ended before the end of February 2015. Based upon my experience with other programs and the fact that in most years February does not have any dates after the 28<sup>th</sup>, I will assume the adverse action date was before then. This means that the petitioner was eligible through February regardless of her circumstances. Well before the end of that month she began a new activity that would have allowed her to regain her eligibility if she had lost it. Therefore, she did not receive any overpayment.

### **CONCLUSIONS OF LAW**

The petitioner did not receive an overpayment of Child Care Benefits because her eligibility for the program never ended.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to remove from her records the finding that she was overpaid \$175 in Child Care Benefits from January 21, 2015, through February 5, 2015, and that end any attempts to recover payments made to her during that period.

## 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 30th 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**

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The preceding decision was sent to the following parties on June 30, 2015.

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