



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

CCO/166102

PRELIMINARY RECITALS

Pursuant to a petition filed May 19, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Early Care Administration to recover child care assistance, a hearing was held on June 9, 2015, by telephone.

The issue for determination is whether the agency correctly determined a child care overpayment.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted signature
Milwaukee Early Care Administration
1220 W. Vliet St., 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. In 2014 petitioner received child care assistance for her son to allow her to work. On October 21, 2014 petitioner contacted her Wisconsin Works (W-2) case manager to report that she had been taken off the work schedule at her job with Redacted. The case manager informed her that she should obtain verification that the employment ended and to return for a new W-2 assessment.
3. Petitioner continued to take her son to day care.

4. Petitioner was re-enrolled in W-2 effective November 17, 2014.
5. By a notice dated May 9, 2015, the child care agency informed petitioner that she was overpaid \$631.28 in child care assistance during the period October 26 to November 30, 2014, claim no. Redact, because she did not participate in an approved activity while utilizing child care services. The notice was slightly misleading because the claim period actually was from October 26 through November 16. Petitioner became eligible for child care again when her W-2 case reopened on November 17.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

Petitioner testified that she reported the lost job to the W-2 agency promptly, and her W-2 worker did not tell her to stop taking her son to day care. The problem is that the child care agency is separate from the W-2 agency, and the W-2 worker would not necessarily know the child care rules or think to advise a client about child care rules. The Day Care Manual, §2.1.5.1 at page 19, anticipates a situation like petitioner's in describing recoverable overpayments: "The client is **only** receiving child care benefits, and fails to report that she lost her job, but continues to take her child to daycare. The client thought she could utilize child care while searching for a job, since there is a provision in W-2 that allows for job searching and she is confused about the requirement to be working to receive child care only." Emphasis in original. When petitioner lost her job she was receiving only child care; she was not in W-2.

The child care policy is strict in this situation. If a person utilized child care but was not in an approved activity, the agency must recover the overpayment. The recovery must occur even if resulting from agency error, and thus even if the W-2 worker should have warned petitioner about not utilizing day care, or if the W-2 worker should have informed the child care agency about petitioner's lost job, the overpayment still must be recovered.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid child care assistance for a period when she was not working or in another approved activity.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 11th day of June, 2015

\sBrian C. Schneider
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 11, 2015.

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