



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/166159

PRELIMINARY RECITALS

Pursuant to a petition filed May 18, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover child care assistance, a hearing was held on July 29, 2015, by telephone. A hearing set for July 1, 2015 was rescheduled at the petitioner’s request.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Monica Johnson
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lafayette County. She formerly resided in Dane County.
2. In early 2014 petitioner started to work at [REDACTED] She was granted full time child care assistance.
3. The county later discovered that petitioner did not have work hours until January 31, 2014, although child care was paid for two weeks before that. The county determined that the child care

- paid prior to January 31 was overpaid, and it notified petitioner that she was overpaid \$103.55, claim no. [REDACTED].
4. Petitioner went through training at [REDACTED] during the two weeks prior to January 31, 2014. The county rescinded claim no. [REDACTED].
 5. In late March, 2014 petitioner's hours were reduced to below 40 hours per week. Petitioner did not report the reduced hours, but her child care provider continued to bill for full time child care. The child care was on an attendance, rather than enrollment, basis, so the provider would bill only for hours the child was present.
 6. By a notice dated April 13, 2014, the county informed petitioner that she was overpaid \$249.53 in child care services from March 30 through May 31, 2014, claim no. [REDACTED]. The overpayment was for child care hours above petitioner's work hours (after adding in travel and lunch time).

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, §2.1.5.1.

The child care authorization being attendance, rather than enrollment based, is a key factor in this case. Enrollment basis means that the provider is paid for an entire week of care regardless of the number of hours the child actually attends. Manual, §3.6.9. Attendance basis means the provider is paid only for hours the child actually attends. Manual, §3.6.7.

Petitioner testified that she did not report that her hours decreased because they had not done so officially. She was scheduled for 40 hours every week in March, April, and May, 2014, but she was let off early during that period because work was finished early. If the child care authorization had been enrollment-based, then petitioner's failure to report would be excused because she had no way of knowing that her hours would be reduced each week (although at some point the reductions would certainly be a pattern rather than an unusual occurrence).

Because the authorization was attendance based, however, petitioner needed the child care only for the hours she worked (plus travel and lunch time). Thus if petitioner worked only six hours, and the child was in care for eight hours, two hours would be considered overpaid.

I conclude that the overpayment determined for the period March 30 through May 31 was correct. Petitioner received child care for more hours than were necessary for her to work, and thus the non-work hours were overpaid.

I will dismiss the appeal because the county already rescinded claim no. [REDACTED], so there is no action to order the county to take.

CONCLUSIONS OF LAW

Petitioner was overpaid child care in the spring, 2014 because her child received care services beyond what was necessary for her to work at her job.

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 3rd day of August, 2015

\sBrian C. Schneider
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 3, 2015.

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