



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/166292

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 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 June 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed an overpayment for childcare benefits in the amount of \$893.14 for the period from September 7, 2014 through October 31, 2014.

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: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner requested childcare benefits for two school aged children while she worked. The agency authorized childcare for these school aged children from 6 a.m. to 2:30 p.m. Monday through Friday.
3. The children attended a daycare from September 7, 2014 through October 31, 2014. The children were on an enrollment based, rather than attendance based plan. The children attended the daycare before school started. The school bus picked up the children from the daycare. The agency paid the daycare for the entire time including the time in which the children attended school.
4. On April 16, 2015 the agency sent the petitioner a notice of overpayment stating that she received \$893.14 in child care benefits that she was not entitled to receive between September 7, 2014 and October 31, 2014.
5. On May 29, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

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. Adm. 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. Adm. 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); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less due to agency error. Child Day Care Manual, Chapter 2, §2.3.1.

In this case there is no dispute that the petitioner was in an approved activity. The issue is that her children were absent from daycare because they were attending school. An enrollment based daycare should have never been authorized for times in which school age children attend school. Daycare is not needed for a person to work because the children are in school.

The petitioner argues that this is the agency's fault and that she should not be responsible for the overpayment. The agency agrees that it was agency error. The statutes and policies direct the agency to collect an overpayment in the event of agency error.

I am somewhat surprised that the petitioner's daycare provider did not alert her that there could be an overpayment. The children got on a bus to go to school shortly after arriving at the daycare. Because the children were on an enrollment based system, the daycare continued to receive payment for the remainder of the day when the children were in school. The agency should also have never authorized these payments. Unfortunately at this point there is an overpayment, and the petitioner is responsible for that overpayment.

CONCLUSIONS OF LAW

The agency correctly assessed an overpayment in the amount of \$893.14 for the period from September 7, 2014 through October 31, 2014.

THEREFORE, it is

ORDERED

That the petition 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 29th day of June, 2015

\sCorinne Balter
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 29, 2015.

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