



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/166594

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on July 7, 2015, by telephone.

The issue for determination is whether the agency correctly determined a \$57,940.88 child care overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Atty. Nancy Wettersten, LaReina Horton
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. Petitioner applied for child care assistance in August, 2010. She reported that she lived with her two children, [redacted] at [redacted]. The father of the children, [redacted], was reported to be absent.
3. Petitioner received child care assistance for the two children ongoing from September 29, 2010 through November 30, 2014. She never reported a change of address, and she did not report that

- the [REDACTED] was merely a mailing address. She did not report at any time that [REDACTED] lived with her.
4. During the entire period that petitioner received child care assistance, she reported to the child support agency that [REDACTED] also lived at [REDACTED]. See Exhibit R-3, page 7 (10/22/14 case note), also Exhibit R-4, page 11.
  5. In 2014 the agency discovered that petitioner and [REDACTED] shared the [REDACTED]. [REDACTED] used the address for voting, driver licensing, and for the receipt of unemployment compensation (UC). Exhibit R-4, pp. 54, 22, and 14. The agency then looked at [REDACTED]'s work history and found that he had no employment record after 2008. Exhibit R-4, page 12. He also did not participate in Wisconsin Works (W-2) during the period of time.
  6. During the investigation the agency found court records that petitioner and [REDACTED] had been evicted in 2014 from an address on [REDACTED].
  7. The agency determined that petitioner and [REDACTED] had never been separated during the period 2010 through 2014. Because there is no record that [REDACTED] was employed at any time during that period, there was no eligibility for child care assistance. By a series of notices dated June 10, 2015, the agency informed petitioner that she was overpaid a total of \$57,940.88 from September 29, 2010 through November 30, 2014, claim nos. [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] in chronological order. The claim was for all assistance paid.

### 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 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. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

It is of vital importance to the administration of the child care program, which is part of the W-2 system, that applicants/recipients provide accurate information for eligibility determinations. Wis. Stat., §49.141(6). For that reason applicants/recipients regularly are asked to affirm that information they provide in applications and reviews are correct and complete. See, for example, Exhibit R-6, page 245.

The record shows that during the entire time that petitioner received child care assistance, she and [REDACTED] shared an address. Petitioner never reported a living elsewhere, and she never reported that the Highland

Avenue address was merely a mailing address. That she reported the same address to the child support agency is a key component.

Petitioner and [REDACTED] testified at the hearing. They testified that after their two children were born, they had relationship problems, and petitioner moved in with a friend. They stayed separated until 2013, when petitioner moved back in with [REDACTED]. She admits to not reporting that move. The reason that they used the [REDACTED] for everything they did was because [REDACTED]'s ex-wife would stalk them if she discovered where they actually were. The friend was expected to testify as well, but she did not answer her telephone when called during the hearing. She later sent a letter to verify that petitioner lived with her. [REDACTED] testified that he was not even aware that petitioner receives child care assistance until he was notified about the overpayment investigation.

This story is rife with holes, starting with the very premise. Why would petitioner need to disguise her actual address from the economic support agency when records are confidential? Why not report to the agency that she was living with the friend but wanted to use a mailing address due to problems with the father's ex-spouse? Why would using a false address prevent a stalker from finding them? How could [REDACTED] not know that petitioner was receiving child care assistance? If mail for both individuals is coming to the same [REDACTED] that was primarily affiliated with [REDACTED], would not [REDACTED] have seen the voluminous mailings from Milwaukee Enrollment Services addressed to petitioner and perhaps ask petitioner about them?

It is curious that petitioner admits to moving back in with [REDACTED] in 2013. Why would she do that? The reason is because they were listed as co-tenants in the eviction that is a public record. Petitioner cannot deny living with [REDACTED] then, so she has to admit that she falsified her address during that period. I have adjudicated many cases involving false reporting of co-parents in the 25 years I have held this position, and it is a regular occurrence that supposedly estranged parents decide to get back together as soon as the agency makes a discovery that they cannot deny. Often the miraculous reconciliation is admitted when an investigator visits the recipient's home unannounced and the absent parent answers the door; in this case the reconciliation was admitted when an eviction action made it obvious that they shared a residence.

Most telling is the child support issue. A child care assistance recipient must cooperate with the Title IV-D child support enforcement agency to establish paternity and obtain child support. Child Day Care Manual, §1.4.7. Such cooperation is a component to child care eligibility. If a child care recipient reports an absent parent, the IV-D agency will seek child support from the absent parent in every instance. I thus asked petitioner whether [REDACTED] was ever ordered to pay child support. She responded that she told the IV-D representative that she did not want child support, and the IV-D agency let it drop. THAT DOES NOT HAPPEN. No IV-D agency would allow a recipient of public assistance to simply decline child support. More likely, in fact, almost certainly, the reason that IV-D did not pursue support is that petitioner reported that they lived together on [REDACTED]. The IV-D agency did not accidentally obtain that address for [REDACTED]. Someone had to report it. The failure in this case is that it took so long for IV-D and Milwaukee Enrollment Services to connect the discrepancy (although my experience with Milwaukee County is that it can take a long time for IV-D to note such discrepancies to Enrollment Services due to the sheer volume of cases).

I conclude that the overpayment claims were imposed correctly. The best evidence in this case is that petitioner and [REDACTED] were together as a couple throughout the period in question, and that there would have been no child care eligibility because [REDACTED] was neither employed nor taking part in W-2 activities. The after-the-fact explanation that petitioner actually lived with a friend at an address she never reported flies in the face of the records, and petitioner's admission that she did not report living with [REDACTED] on [REDACTED] causes any testimony from her to lack credibility.

**CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid child care assistance from 2010 to 2014 from she falsely reported the children’s father to be absent.

**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 20th day of July, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on July 20, 2015.

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