



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/166631

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 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 July 14, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner for the period of December 29, 2013 – May 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: Jashema Wallace

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 2, 2013, the Petitioner submitted a Six Month Report Form and submitted paystubs dated September 13, 2013 and September 27, 2013.

3. The agency incorrectly calculated the Petitioner's earned income for purposes of eligibility for child care benefits.
4. On May 20 and 21, 2015, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$760.20 for the period of December 29, 2013 – May 31, 2014.
5. On March 26, 2014, the agency received an employer verification from Petitioner's employer, ██████ Health. It reported that she works 40 hours/week at \$16.25/hour.
6. On April 28, 2015, the agency received a report of actual wages for the Petitioner from ██████ for the period of January, 2014 – April, 2015.

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 Wis. Stat. § 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. Wis. Stat. § 49.497(1).

In this case, the agency concedes that this overpayment was caused by a non-client error. The overpayment period for a non-client error (also known as administrative error) claim ends with the month the error last occurred and extends back 12 months or when the error first became effective, whichever is most recent. The overpayment period for a non-client error cannot begin more than 12 months prior to the notification date of the overpayment. Child Care Manual, § 3.5.2.

In this case, the first error by the agency occurred in December, 2013. The last error by the agency occurred in April, 2015. The notification date of the overpayment was May 20, 2015. Thus, according to the agency's policy, the overpayment cannot begin more than 12 months prior to May 20, 2015. The overpayment period established in this case is from December, 2013 – May 31, 2014. Based on the agency policy, the agency can recover an overpayment in this case only for the period of May 20 – 31, 2014.

As noted above, though the Petitioner did not err in creating the error, the Wisconsin Statutes require the agency to collect for overpayments even if caused by agency error. Therefore, this case is remanded to the agency to revise the overpayment period to May 20 – 31, 2014 and to re-determine the amount of the overpayment.

CONCLUSIONS OF LAW

The agency may recover an overissuance of child care benefits to the Petitioner for the period of May 20 – 31, 2014 due to agency error.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period in this case to May 20 – 31, 2014 and to re-determine the amount of the overpayment based on the revised overpayment period. The agency shall issue a new notice of overissuance and worksheet to the Petitioner. The notice shall give the Petitioner the right to appeal the amount of the overpayment if she disagrees with the amount. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

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 20th day of October, 2015

\sDebra Bursinger
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 October 20, 2015.

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