



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/166906

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on August 05, 2015, at Madison, Wisconsin. The record was held open for 10 days to allow the respondent to submit electronic Case Comments. That documentation was timely received.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid Child Care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County. She was receiving Child Care Benefits during April, 2014. She had two minor children in day care in April of 2014. See, Exhibit A4.

2. Petitioner commenced maternity leave on April 8, 2015. Exhibit C. Petitioner's two minor children continued to attend day care in April of 2015, after petitioner commenced her maternity leave.
3. The respondent reviewed the petitioner's Child Care Benefits history and determined that she had been overpaid Child Care Benefits in April, 2014, because she was not working or otherwise engaged in W-2 activities.<sup>1</sup> See, Exhibits A2 & A3.
4. On June 22, 2015, the county agency issued a Child Care Overpayment Notification, with attached Worksheet demonstrating the calculations made, to the petitioner informing her that she had been overpaid \$1,394.04 of Child Care Benefits in April of 2014, due to "CLIENT ERROR". Exhibit A2.
5. On June 26, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Child Care Benefits overpayment determinations. Exhibit 1.
6. Following April 8, 2014, and continuing at least until the end of that month, the petitioner was not working nor engaged in participation in W-2 activities while still taking her children to day care and receiving Child Care Benefits.

### 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).

The county agency determined that the petitioner was overpaid child care assistance solely because she lacked eligibility for child care when received as she was no longer working, nor participating in W-2 or any W-2 activities. See, Wis. Stat. §§ 49.155(1m)(a)2, 3; see also, *Wisconsin Shares Child Care Assistance Manual (Manual)*, § 2.1.5.1. The agency determined that the petitioner was not working or participating in an approved activity, had not affirmatively requested to hold a spot, and that her maternity leave exceeded six weeks. See, *Manual* §§ 3.11.2-3.11.3.

The Child Care Program provides for a six week period to "hold a spot" in child care for persons on maternity leave. See, Exhibit F. However, the respondent reports that, since the petitioner did not affirmatively report the request to hold her children's spots, and because her maternity leave extended past 6 weeks, an overpayment occurred.

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<sup>1</sup> The notice defines the overpayment period as April 13, 2014, through May 31, 2014. The worksheets, however, indicate that the overpayment was limited to the month of April, 2014. See, Exhibits A3 & A4.

The *Manual* does not specify precisely when a Child Care recipient must request to retain benefits to hold a spot with her Child Care provider. However, it does specifically indicate that a recipient may only hold a spot for a period of six weeks. The petitioner's maternity leave exceeded this time period.

Conversely, it appears that the petitioner only utilized Child Care for a period of three weeks. The respondent argued that the petitioner never requested to hold a spot, and therefore she was not eligible for Child Care while on maternity leave. The petitioner testified that she called to report her maternity leave on April 10, 2014. Unfortunately, the Case Comments provided by the respondent only extend back to May 13, 2015. As a result, the record does not indicate what, if any, information the petitioner provided regarding the anticipated length of her maternity leave. The respondent provided an Employer Verification form, which specified that her maternity leave was expected to extend until June 23, 2014. Exhibit D. The petitioner countered that she had met with her case worker and confirmed with Head Start that her Child Care coverage would continue during her maternity leave. This information, even if accurate, however, would not preclude the conclusion that an overpayment occurred here.

The agency is generally required to seek recovery of Child Care Benefits from the recipient for client error and non-client error. See, *Manual*, §2.1.5.2.

The petitioner's testimony is to the effect that the agency personnel misled her when she contacted the agency and reported her maternity leave. She opines that it is unfair to impose this overpayment against her when the agency workers did not accurately inform her that the respondent does not provide child care for more than six weeks when a person is on maternity leave. The administrative law judges of the Division of Hearings & Appeals do not possess the powers of a court of equity. Rather, I am limited in my review to the provisions of law and policy applicable to a given appeal. Law requires that the petitioner must have been on maternity leave for 6 weeks or less in order to maintain her Child Care benefits. She was not. Law requires that the agency seek to recover overpaid Child Care Benefits when the person received them and was not otherwise eligible, regardless of fault. It does not matter whether the agency worker gave her incorrect information, if this in fact occurred. This is not a basis to overturn the overpayment determination. I have no powers to grant equitable relief because the petitioner believes the agency worker or Head Start misled her. Rather, whether agency error or recipient error, the overpayment must be recovered.

Based upon this record, I can only conclude that the petitioner was not eligible for the Child Care Benefits when she received them in April of 2014.

### CONCLUSIONS OF LAW

The petitioner was not eligible for Child Care Benefits in the month of April, 2014; as a result, she was overpaid \$1,394.04 in Child Care Benefits during the period of April 13, 2014 – April 30, 2014.

**NOW, THEREFORE, it is** **ORDERED**

That the petition for review herein be, and the same hereby 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 Madison,  
Wisconsin, this 13th day of October, 2015

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\sPeter McCombs  
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 13, 2015.

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