



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 29, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Portage County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on July 22, 2015, at Stevens Point, Wisconsin. With the petitioner's consent, the hearing record was held open for 14 days for submission of earnings documentation by the petitioner; nothing was received.

The issue for determination is whether the petitioner was overpaid CC benefits for the December 29, 2013 through January 2, 2015, period.

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: [REDACTED] ES Spec.
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.

- ██████████
2. The petitioner received CC benefits as a household of three (later four) persons from at least December 29, 2013 through January 2, 2015. The benefit was a subsidy of a portion of the petitioner's ongoing child daycare costs.
 3. On May 28, 2015, a *Child Care Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$893.36 in CC for the 12/29/13 – 1/2/15 period (claims #3900435053, #5900435055). Exhibit 3.
 4. The petitioner correctly reported her own earned income throughout 2014. She has a child-in-common with ██████████. ██████████ lived with her from at least January 1 through January 2, 2015. He was employed throughout 2014 by ██████████. The combination of the petitioner's earnings and ██████████'s earnings caused the household to be overpaid some amount in its CC subsidy in every month in the subject period.
 5. The petitioner did not report that ██████████ was living with her, and therefore also did not report his income to the CC agency. The agency later learned of and confirmed his presence; the petitioner does not dispute that he resided with her during the subject period. The agency requested income verification for ██████████ for the period from the petitioner and received nothing. The agency later received a SWICA database record showing ██████████'s wages, reported quarterly by his employer. The SWICA income figures for ██████████ were used to calculate the household's income. The agency also included the petitioner's earnings, as reported by the petitioner at that time. The result was the determination that the household received subsidies that were too large under the CC program. *See*, Exhibit 1, 5/27/15 overpayment worksheet.

DISCUSSION

An overpayment to a parent occurs when payments are made for a level of CC benefit for which the parent was not eligible. Wis. Admin. Code §DCF 201.04(5)(a). The applicable overpayment rule requires recovery of the overpayment, regardless of fault. *Id.* See in accord, *Child Day Care Manual (Manual)*, §2.3.1, available at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

Neither ██████████'s presence in the household, the fact of ██████████'s employment with ██████████, ██████████'s paternity of a child-in-common, or the arithmetic of the agency's overpayment determination is in dispute. The petitioner asserted that the agency may have used some incorrect earnings figures for ██████████, but brought nothing to hearing to refute the agency's numbers. The hearing record was held open for 14 days to allow the petitioner an opportunity to submit ██████████'s paystubs for the period; nothing was received. The best evidence in this hearing record is the agency's income data from the State of Wisconsin Department of Workforce Development (SWICA database). Relying on that data for ██████████'s income, the agency was correct in determining that the household was overpaid varying amounts of CC subsidies during the subject period.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid \$893.36 in CC subsidies for the 12/29/13 through 1/2/15 period.

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 Madison,
Wisconsin, this 9th day of September, 2015

\sNancy J. Gagnon
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 September 9, 2015.

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