



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167016

PRELIMINARY RECITALS

Pursuant to a petition filed July 02, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to Child Care, a hearing was held on August 04, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$30,590.48 for the period of June 1, 2011 through March 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: Megan Ryan

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. On June 2, 2015 the agency sent the petitioner four overpayment notices. These notices were as follows:

- a. Claim number [REDACTED] for June 1, 2011 through December 31, 2011 with an overpayment in the amount of \$7,491.31.
 - b. Claim number [REDACTED] for January 1, 2012 through December 31, 2012 with an overpayment in the amount of \$14,269.79.
 - c. Claim number [REDACTED] for January 1, 2013 through December 31, 2013 with an overpayment in the amount of \$7,290.90.
 - d. Claim number [REDACTED] for January 1, 2014 through March 31, 2014 with an overpayment in the amount of \$1,538.48.
3. The total overpayment for the entire period from June 1, 2011 through March 31, 2014 was \$30,590.48.
 4. This overpayment was caused by failing to report the father living in the home. The petitioner is the father. The mother is M.S. With the father's income, the family was ineligible for child care assistance.
 5. The petitioner disputes that he was in the home during the majority of the overpayment. He admits that he was living in the home from March 1, 2013 through March 31, 2014. The total overpayment amount during that time period was \$5,730.50. That amount is no longer in dispute.
 6. The mother moved from the [REDACTED] area to the [REDACTED] around June of 2011. She started a new job in the [REDACTED] area at that time. The petitioner also began working at [REDACTED] in [REDACTED] on July 15, 2011.
 7. The mother applied for and began receiving child care assistance in June of 2011. She reported that the petitioner was not living in the home.
 8. The agency learned that the petitioner was likely living in the home when the child support agency contacted them around March of 2014. The child support agency informed them that the mother reported the father lived in [REDACTED], Wisconsin. They attempted to serve him at that address. The process server reported that the person who answered the door said that the petitioner was living in [REDACTED]. The agency then began a fraud investigation to determine whether the petitioner was living in the home, and whether there was a child care overpayment.
 9. The Department of Motor Vehicle records show that the petitioner's address was the same as M.S. The petitioner also had three vehicles registered in his name at the M.S.' address. The petitioner picked up the children up from daycare on most evenings. The petitioner updated his address with Circuit Court at the end of 2011. He updated his address to M.S.' address. This was after Circuit Court received returned mail at the address the petitioner previously provided them. Facebook posts from 2012 further indicate that the petitioner was living with the mother and the children as a family unit.
 10. The household gross income including the petitioner's income for the overpayment period was as follows: \$5,690.79 in June 2011, \$7,736.79 in July 2011, \$3,895.02 in August 2011, \$4,439.20 in September 2011, \$5,167.37 in October 2011, \$4,037.53 in November 2011, \$8,979.55 in December 2011, \$5,609.79 in January 2012, \$7,736.79 in February 2012, \$3,895.02 in March 2012, \$4,439.20 in April 2012, \$5,167.37 in May 2012, 4,037.53 in June 2012, \$5,837.94 in July 2012, \$5,438.41 in August 2012, \$5,888.70 in September 2012, \$5,393.03 in October 2012, \$8,748.24 in November 2012, \$5,738.01 in December 2012, \$5,971.54 in January 2013, \$5,548.19 in February 2013, \$7,723.91 in March 2013, \$5,074.80 in April 2013, \$6,237.20 in May 2013, \$5,241.46 in June 2013, \$5,241.46 in July 2013, \$5,363.15 in August 2013, \$5,359.52 in September 2013, \$5,575.66 in October 2013, \$6,603.55 in November 2013, \$5,401.75 in December 2013, \$5,248.72 in January 2014, \$5,252.36 in February 2014, and \$5,297.35 in March 2014.

11. On July 2, 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, §DWD 12.23. 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, §DWD 12.23.(1)(g).

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); W-2 Manual, §15.2.0. For initial eligibility for child care assistance, the household income must be less than 185% of the Federal Poverty Level (FPL). Child Day Care Manual, Chapter 1, §1.5.1.1. For continued eligibility gross income must be less than 200% of the FPL. Child Day Care Manual, Chapter 1, §1.5.1.2. The agency shall recover child care payments if they determine that the household's gross income is over program eligibility levels. Child Day Care Manual, Chapter 3, §3.5.1.

The issue is whether the petitioner was living with M.S. and the children during the overpayment period. The petitioner agrees that he was living in the home between March 1, 2013 and March 31, 2014. He further agrees that were he living in the household during the overpayment period, the family's income would have been over the program eligibility level. That said the petitioner disputes that he was living in the mother's home with the children between June 2011 and February 28, 2013.

The agency points to several key pieces of evidence to show that the petitioner was living in the home between June 2011 and February 28, 2013. The petitioner's driver's license listed M.S.' address. The petitioner had three cars. All of the cars were listed to M.S.' address. The mother reported that the petitioner was living in [REDACTED], Wisconsin. However, the petitioner started working in [REDACTED] Wisconsin in July of 2011. This is the time in which the family moved from the [REDACTED] area to the [REDACTED] area. The petitioner continued to work in the [REDACTED] area through the end of the overpayment. The agency also points to a Circuit Court Access Program (CCAP) printout for 11TR3407, which updates the petitioner's address to M.S.' address at the end of 2011. Facebook posts from 2012 further indicate that the petitioner was living with the mother and the children as a family unit. In March there are pictures from a family trip to [REDACTED]. In September the petitioner posted a picture of the son going off to kindergarten. The daycare reported that the petitioner picked up the children from daycare on most evenings.

The petitioner attempts to separate each piece of evidence. He states that he was staying with his father in [REDACTED], Wisconsin. He showed some medical bills that had that address. However, when confronted with the fact that he worked in [REDACTED], Wisconsin, he stated that he also stayed with his mother in Kaukauna during the week. He attempts to explain the cars being registered in his name at M.S.'s address in a long drawn out story about one car getting repossessed, then a loan in his name on another car that he let her drive as she was taking care of the children. I do not understand how this would explain the third

car. Regardless, this explanation is not credible. If she were simply driving cars that were registered in his name, then the cars would have also been registered at his address. He disregards the Facebook posts stating that they took a trip together as they were trying to repair their relationship. He states that M.S. worked late, and that is why he had to pick up the kids. He said that he would pick up the kids, watch them, and then go to his mother's house when M.S. got home from work.

It is important to look at the evidence together. I note that although the petitioner vehemently denies living with M.S. and the children that he is unable to point to where he was living during this overpayment time period. On one had he states that he was staying with his father in [REDACTED], Wisconsin. However, on the other hand he states that he also stayed with his mother who lived closer to his work. The addresses that he lists are sometimes the father's address, but more often are M.S.'s address.

I also considered that the petitioner no longer disputes the last year of this overpayment. Although this portion of the overpayment is no longer in dispute, neither the petitioner nor M.S. ever reported to the agency that the petitioner had moved in. This family made anywhere between \$3,895.02 and \$8,979.55 in monthly gross income while the agency was paying their daycare expenses. Given the totality of the evidence, I find that the petitioner was living with M.S. during this overpayment period.

CONCLUSIONS OF LAW

The agency correctly assessed a child care overpayment in the amount of \$30,590.48 for the period of June 1, 2011 through March 31, 2014 because the father was in the home making the family ineligible for child care assistance.

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 21st day of October, 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 October 21, 2015.

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