



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/167415

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 20, 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 August 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$980.24 due to agency error.

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: Keisha Love

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Milwaukee County.

2. On July 16, 2015 the agency sent the petitioner a notice stating that she was overpaid child care benefits in the amount of \$980.24 for the period of August 31, 2014 through October 31, 2014. The notice stated that the overpayment was due to client error.
3. On July 20, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
4. On August 12, 2015 the agency sent the petitioner a corrected notice stating that she was overpaid child care benefits in the amount of \$980.24 for the period of August 31, 2014 through October 31, 2014. The notice stated that the overpayment was due to agency error.
5. The overpayment arose because the child began attending school on August 31, 2014. Prior to that this child did not attend school. Between August 31, 2014 and October 31, 2014 the child attended school from 7:45 a.m. to 2:30 p.m. Although the petitioner informed the agency that the child was beginning school, the agency continued to authorize 40 hours per week of child care. Due to the hours the child attended school, the petitioner was only eligible for 16 hours per week of child care benefits. The overpayment is the difference between the 40 hours per week authorized and paid for, and the 16 hours per week for which the petitioner was eligible.

### **DISCUSSION**

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed August 2015).

In this case the petitioner argues that she told the agency that her child was starting school, and that the overpayment is not her fault. The agency agrees that the overpayment was not the petitioner's fault, and that the overpayment was caused agency error. The administrative code directs the agency to recover all overpayments, regardless of fault. Thus, even though this overpayment was caused by agency error, the agency still must recover the overpayment.

### **CONCLUSIONS OF LAW**

The agency correctly assessed a child care overpayment in the amount of \$980.24 due to agency error.

**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 24th day of August, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 24, 2015.

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