



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167560

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 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 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

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: Sheila Easley

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent child care overpayment notices; one dated July 10, 2015 that was manually generated and informed Petitioner that she had been overpaid child care benefits in the amount of \$868.47 and the other, dated July 13, 2015 and computer system generated, informed her of the same overpayment. The time period of the overpayment was July 7, 2013 through April 30, 2014. This is claim # [REDACTED]

3. Petitioner received the child care benefits involved here.
4. The agency alleged this overpayment as a result of client error – the failure of Petitioner to report a second job and the income from that job.
5. Petitioner completed a child care case review via telephone on August 27, 2013. She reported employment at [REDACTED] but there is no record of the report of the second job. After the phone review/interview, the agency sent Petitioner a summary and notice, both dated August 28, 2013, that detailed the phone interview. The [REDACTED] employment is noted but not the second job. Petitioner did not report any inaccuracies in either document.
6. Petitioner completed an online six month report form on February 27, 2015. She again reported employment at [REDACTED] but there is no record of the report of the second job.
7. Petitioner began work at the second job on July 8, 2013. She had gross income from that job of \$310.80 in July and \$808.96 in August 2013.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *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 or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*. [The Manual has been updated but the references in this Decision are to the manual in effect at the time of circumstances here.]

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes a provision that requires that a parent report changes within 10 days if the change could affect eligibility and that requirement included an increase in income of \$250.00, a change in hours or starting or stopping an approved activity. *Manual, §1.15.1 and §1.15.2*. Additionally, the *Manual, at § 2.1.5.1* requires that the overpayment start with the 1st full week after the second job started. *Manual, §2.1.5.1*.

Petitioner testified that she told the review on August 27, 2015 about the 2nd job and was told that the agency would look up her earnings. She allows that she did not read the August 28, 2013 that provided detailed of the telephone review. I am concluding that Petitioner was overpaid as alleged. It makes no sense that she would be told that the agency would look up her earnings from the new job. There is no way to look up monthly earnings pay records. Pay stubs are required. *See Manual, generally, §1.7.0.* Further, nothing in agency notes or any other documentation confirms Petitioner recollection of the August 27, 2013 review. Finally, the second job was not reported by Petitioner on the February 27, 2014 six month report form.

CONCLUSIONS OF LAW

That the evidence demonstrates that the agency correctly seeks recovery of an overpayment of child care as alleged because Petitioner did not report income as required.

THEREFORE, it is **ORDERED**

That this appeal 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 17th day of November, 2015

\sDavid D. Fleming
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 November 17, 2015.

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