



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



CCO/167614

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a telephonic hearing was held on September 03, 2015. Prior to concluding the hearing on September 3, 2015, the parties reached a stipulated agreement as to a portion of the overpayment at issue. The stipulated agreement stated that the petitioner was to submit to the agency pay stubs or other acceptable, verifiable information showing when he worked for [redacted] from December 2014-April 2015, and to do so no later than September 21, 2015. If, and only if, the petitioner timely submitted the information detailed above, the county agency agreed to redetermine the child care overpayment. The stipulated agreement was set forth in the INTERIM DECISION, Case No. CCO/167614, issued on September 4, 2015. On September 22, 2015 the county agency advised this administrative law judge that no wage verification was received by the due date and thus it could not redetermine the overpayment. Accordingly, this decision addresses the entirety of the appealed overpayment.

The issue for determination is whether the agency has established an overpayment of child care funds against the petitioner.

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: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner received child care benefits for his children while he was not working nor in any approved W-2 activity from December 5, 2014-May 31, 2015.
3. By a notice dated July 14, 2015 the agency informed petitioner that he was overpaid \$2254.30 (claim # [REDACTED]) in child care provided from December 5, 2014-May 31, 2015 due to client error.

DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires the agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. § 49.195(3). The agencies must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, Wisconsin Shares Child Care Assistance Manual (WSCCA Manual), Ch. 2., available online at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2client.pdf.

In this case, the agency established the overpayment at issue in large part because petitioner had, and used, a full time authorization for child care when he was only working part time. At the hearing, he testified that he had another job, which had not been reported to the agency previously, and thus the stipulated agreement was entered into to allow him time to show that he had another job and when he was working. While he may in fact have been working another job, he still has not provided the evidence to show *when* he was working, in order to justify the need for the hours of child care that he utilized.

A parent is eligible for child care services if he needs the care to:

1. Meet the school attendance requirement under s. [49.26 \(1\) \(ge\)](#).
 - 1m. Obtain a high school diploma or participate in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation, if the individual is not subject to the school attendance requirement under s. [49.26 \(1\) \(ge\)](#) and at least one of the following conditions is met:
 - a. The individual is 18 or 19 years of age.
 - b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. [48.57 \(3m\)](#) or with a long-term kinship care relative under s. [48.57 \(3n\)](#) or is in a foster home licensed under s. [48.62](#), a subsidized guardianship home under s. [48.623](#), a group home, or an independent living arrangement supervised by an adult.
2. Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.
3. Work in a Wisconsin works employment position, including participation in job search, orientation and training activities under s. [49.147 \(2\) \(a\)](#) and in education or training activities under s. [49.147 \(3\) \(am\)](#), [\(4\) \(am\)](#) or [\(5\) \(bm\)](#).

- 3m.** Participate in a job search or work experience component of the food stamp employment and training program under s. [49.79 \(9\)](#).
- 4.** If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education, including an English as a 2nd language course; literacy tutoring; or a course of study meeting the standards established by the state superintendent of public instruction under s. [115.29 \(4\)](#) for the granting of a declaration of equivalency of high school graduation. An individual may receive aid under this subdivision for up to 2 years.
- 5.** Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat., §49.155(1m); See also Wisconsin Shares Child Care Assistance (WSCCA) Manual, §1.1.1, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>.

Thus, as to the overpayment established from December 2014-April 2015, petitioner has not rebutted the agency's case as he has not provided the evidence to show *when* he was working, in order to justify the need for the hours of child care that he utilized. The agency established an overpayment for this period of time, giving him credit for the hours he was working and travel time.

Also, in April 2015 petitioner applied for W-2. He signed two employability plans accordingly, setting forth his required W-2 activities. As stated above, a person can receive child care benefits when working in a W-2 employment position, including participation in job search, orientation and training activities or in education or training activities. See also WSCCA Manual, §1.5.4. What the agency explained however, was that petitioner had not shown by the job searches that he submitted for May 2015 that he was engaged in W-2 activities during all of the hours that he took his children to day care. In other words, even if petitioner was authorized 40 hours per week for child care, he could not be taking his children for the full 40 hours if he wasn't participating in his W-2 activities during the time that his children were in care. The agency presented petitioner's job search logs (Exhibit 5) as the basis for showing when he was completing his W-2 activities, and compared that against the hours his children were at child care (see Exhibit 3). The comparison shows the children in care during hours when he was not in an approved activity. For example, on May 15, 2015 petitioner's job log showed him as applying for Tru Green from 12:00-1:00 p.m. (during which time his children were in care), but his confirmation of that activity shows it completed at 11:54 a.m. The agency compared the hours he was in compliance against the hours paid for the care, and established the overpayment, giving him credit for the hours he was in compliance and travel time. See Exhibit 4.

Petitioner's argument was that his W-2 worker told him to complete his job logs the way he did. Even if this is true, it does not show that he was completing his W-2 activities during the time his children were in care. The law and policy don't account for the situation he describes; the child care was intended as a service for the time that he is completing W-2 activities.

There is no evidence to show that he was in any approved activity for the time periods identified under this overpayment. I have reviewed the calculations and find no errors, and petitioner has not raised any issue with them either. Accordingly, I uphold the county's overpayment determination. While petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977).

CONCLUSIONS OF LAW

The agency has established an overpayment of child care funds against the petitioner in the amount of \$2254.30 (claim # [REDACTED]) for the period of December 5, 2014-May 31, 2015 due to client error.

THEREFORE, it is

ORDERED

The petition for review herein 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 4th day of November, 2015

\sKelly Cochrane
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 4, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud