



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/167637

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care, a hearing was held on August 20, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover overissuances of child care benefits to the Petitioner as follows:

Table with 2 columns: Period and Amount. Rows include July 1, 2011 - August 31, 2011 (\$ 377.22), August 1, 2012 - August 31, 2012 (\$ 179.70), January 1, 2013 - September 30, 2013 (\$5,915.97), January 1, 2014 - March 31, 2014 (\$4,749.98), and February 1, 2015 - March 31, 2015 (\$ 154.63). Claim numbers are redacted.

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: Jelena Jones

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner has received child care benefits since at least 2011. Petitioner's son AL was born in 1994.
2. On May 18, 2011, the Petitioner's employer [REDACTED] submitted an Employer Verification of Earnings (EVFE) to the agency reporting that the Petitioner works 40 hours/week at \$13.59/hour.
3. On or about April 17, 2012, the Petitioner completed a renewal. She reported a household of 6. She reported employment at [REDACTED]. On April 24, 2012, the Petitioner submitted pay statement from [REDACTED] for the periods ending April 1, 2012 and April 8, 2012. On May 3, 2012, the Petitioner's employer [REDACTED] submitted an EVFE to the agency reporting that the Petitioner works 40 hours/week at \$14.23/hour.
4. On June 5, 2012, the agency issued a Notice of Eligibility Child Care informing the Petitioner that she would continue to be eligible for child care benefits effective April 1, 2012. This was based on a household size of 6 and counted gross income of \$2,447.56, including earned income from [REDACTED] of \$2,447.56/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
5. On June 29, 2012, October 2, 2012, and April 9, 2013 the Petitioner's employer [REDACTED] submitted an EVFE to the agency reporting that the Petitioner works 40 hours/week at \$15.23/hour.
6. On September 4, 2012, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported a household of 6. She reported employment at [REDACTED]. She reported she no longer receives child support for AL.
7. On October 5, 2012, the agency issued a Notice of Eligibility Child Care informing the Petitioner that her SMRF was complete and she would continue to be eligible for child care benefits effective October 1, 2012. This was based on a household size of 5 and counted gross income of \$2,619.56, including earned income from [REDACTED] of \$2,619.56/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
8. On or about March 20, 2013, the Petitioner completed a renewal. She reported a household of 6. She reported her employment at [REDACTED] and AL's employment at [REDACTED]. On April 5, 2013, the agency received an EVFE from [REDACTED] reporting an end of employment date of December 28, 2012 for the Petitioner's son AL and a final paycheck with gross wages of \$1600 on January 4, 2012.
9. On April 29, 2013, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she would continue to be eligible for child care benefits effective April 1, 2013. This was based on a household size of 5 and counted gross income of \$2,619.56, including earned income from [REDACTED] of \$2,619.56/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
10. On July 10, 2013, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she would continue to be eligible for child care benefits effective July 1, 2013. This was based on a household size of 5 and counted gross income of \$2,619.56, including earned income from [REDACTED] of \$2,619.56/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
11. On September 5, 2013, the Petitioner submitted a SMRF to the agency. She reported a household of 6. She reported her employment at [REDACTED]. On September 6, 2013, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$15.37/hour.
12. On or about March 25, 2014, the Petitioner completed a renewal. She reported a household of 6. She reported her employment at [REDACTED]. On June 18, 2014 and October 22, 2014, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$16.04/hour.

13. On May 22, 2014, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she would continue to be eligible for child care benefits effective May 1, 2014. This was based on a household size of 5 and counted gross income of \$3973.07, including earned income from [REDACTED] of \$3973.07/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
14. On June 25, 2014, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she would continue to be eligible for child care benefits effective July 1, 2014. This was based on a household size of 5 and counted gross income of \$2,758.88, including earned income from [REDACTED] of \$2,758.88/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
15. On October 8, 2014, the Petitioner submitted a SMRF to the agency. She reported a household of 6. She reported her employment at [REDACTED]. On December 8, 2014, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$15.04/hour.
16. On October 24, 2014, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she would continue to be eligible for child care benefits effective November 1, 2014. This was based on a household size of 5 and counted gross income of \$3,128.88, including earned income from [REDACTED] of \$3,128.88/month. The notice informed the Petitioner to report changes that may affect eligibility within 10 days of the change.
17. Petitioner was employed with [REDACTED] from April 25, 2011 through at least March 21, 2014. Her actual countable income, for the months relevant to the overpayment, was as follows:

July, 2011	\$3,834.85
August, 2011	\$3,654.81
August, 2012	\$3,648.31
January, 2013	\$2,979.84
February, 2013	\$3,364.60
March, 2013	\$4,813.30
April, 2013	\$4,089.53
May, 2013	\$4,656.69
June, 2013	\$3,943.42
July, 2013	\$3,530.65
August, 2013	\$4,021.74
Sept., 2013	\$4,168.90
January, 2014	\$4,873.41
February, 2014	\$4,504.27
March, 2014	\$4,681.82
February, 2015	\$3,136.70
March, 2015	\$3,739.40

18. On June 22, 2015, the agency issued Child Care Overpayment Notices to the Petitioner informing her that the agency intends to recover overissuances of child care benefits as follows:

July 1, 2011 – August 31, 2011	\$ 377.22 (Claim # [REDACTED])
August 1, 2012 – August 31, 2012	\$ 179.70 (Claim # [REDACTED])
January 1, 2013 – September 30, 2013	\$5,915.97 (Claim # [REDACTED])
January 1, 2014 – March 31, 2014	\$4,749.98 (Claim # [REDACTED])
February 1, 2015 – March 31, 2015	\$ 154.63 (Claim # [REDACTED])

19. On July 28, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 Wis. Stat. § 49.195(3). Recovery of child care overpayments also is mandated in the 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. Wis. Admin. Code § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change. Wisconsin Shares Child Care Manual (CCM), § 1.15.1. The changes that must be reported include a change in monthly income if it increases by at least \$250 or any increase that raises gross income above 200% of the federal poverty level (FPL). CCM, § 1.15.2

In this case, the agency alleges that the Petitioner failed to report to the agency when her gross monthly income increased by at least \$250/month and/or exceeded 200% of the FPL. The agency produced primary documentation of the petitioner's actual earnings, the overpayment computations, and the notice and worksheets sent to the petitioner fully informing her of the overpayments. The agency found she had income in excess of the reporting requirement and/or 200% of the FPL as noted in Finding of Fact # 14. These computations establish she was overpaid a total of \$4,999.22, as found in CCO Claim No. [REDACTED]

The Petitioner does not dispute her actual wages or the income that she and her employer reports. She argues that she always reported her employment and income during renewals and her employers submitted employment verifications as requested.

The evidence demonstrates that the Petitioner did submit requested employment verifications at her renewals. The agency is not alleging that she misrepresented the information regarding her employment. However, child care recipients are required to report if their actual gross wages exceed the reporting requirements for the household size between renewals. Petitioner was notified of the need to report a change in income in the eligibility notices issued throughout the period from 2011 – 2015. The Petitioner

conceded that she was not aware that she must report to the child care agency if her income increased by at least \$250/month or exceeded 200% of the FPL. She felt she had done what she was required to do when her employment verifications were submitted at renewals.

I reviewed each of the overpayment claims. Based on the Petitioner's actual wages, I conclude that the agency properly determined the months when the Petitioner was required to report that her income had exceeded the reporting requirement and properly determined the months in which the Petitioner was overissued child care benefits because of the failure to report. I further reviewed the agency calculations of the overpayments. The agency calculated the difference in benefits that would have been issued if her income had been properly reported and the benefits that were actually issued. I find no error in the agency calculations.

The Petitioner was credible in her testimony that she was not aware of the requirement to report. She is, however, still responsible to repay the child care benefits that were overissued to her as a result of her failure to report when required.

CONCLUSIONS OF LAW

The agency properly seeks to recover overissuances of child care benefits to the Petitioner as established in Claim Nos. [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

THEREFORE, it is

ORDERED

That the Petitioner's 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 24th day of November, 2015

\sDebra Bursinger
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 24, 2015.

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