



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 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 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$1,281.56 for the period of July 1, 2014 through October 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: [REDACTED]

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 # [REDACTED]) is a resident of Milwaukee County.
2. On May 6, 2015 the agency sent the petitioner a notice stating that she was overpaid \$1,854.72 in child care benefits for the period from July 1, 2014 through October 31, 2014. The agency alleged that the petitioner was not in an approved activity when her children attended child care during that time period. The notice advised the petitioner in Spanish that she had until June 22, 2015 to request a fair hearing.

3. On July 31, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
4. A hearing was held. The petitioner provided paystubs to the agency at the hearing. The agency determined that the petitioner had worked some hours between July 1, 2014 and October 31, 2014. The agency gave the petitioner a credit for the times that she was working reducing the overpayment amount from \$1,854.72 to \$1,281.56.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within **45** days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), Wis. Admin Code §HA 3.05(3); a longer deadline is not specified in policy in the Department's *Child Care Policy Manual*, at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. A negative action can be the assessment of an overpayment. Because the petitioner's appeal was filed beyond the 45 day time limit, I would generally be without jurisdiction to hear the case.

This case is unique in that the agency did not argue that the appeal was untimely. The agency further agreed that they had made an error in their calculation of the overpayment, and agreed to reduce the amount of the overpayment in order to fix their error. I give the agency credit, in that this is the right thing to do. An appeal of the new overpayment notice, would be timely. All of the issues regarding the overpayment were addressed at the hearing, and therefore, this decision addresses the merits of this case.

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 September 2015).

In order to qualify for child care assistance one, or both parents in the case of a two parent household, must be in an "approved activity." *Child Day Care Manual*, §1.4.8.2. An approved activity is a term of art in child care assistance cases. *Id.* Approved activities include employment with a qualified employer who has a federal employer identification number, reports wages, and participates in workmen compensation, high school for someone under 19, technical school in some cases, and some self-employment in some cases. *Id.* at §1.5.0. This is not an exhaustive list. *Id.*

The only issue in this case is whether the petitioner was working while her children attended child care between July 1, 2014 and October 31, 2014. The petitioner provided paystubs showing when she was working during that time period. Although there were times during which she was working and her children were attending child care, the agency did not assess an overpayment for those time periods. The overpayment is for time periods in which she was not working, and her child care provider billed the Wisconsin Shares program for taking care of her children.

The petitioner's testimony that her children were not attending child care when she was not working is not credible. She was not able to provide any supporting documentation. She states that she asked the daycare provider who refused. Based upon the work records of when she was working and the times for which the daycare provider billed for child care, the agency correctly assessed an overpayment in the amount of \$1,281.56 for the period from July 1, 2014 through October 31, 2014.

CONCLUSIONS OF LAW

The agency correctly assessed a child care overpayment in the amount of \$1,281.56 for the period of July 1, 2014 through October 31, 2014.

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 15th day of September, 2015

\s\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 September 15, 2015.

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