



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION



PRELIMINARY RECITALS

Pursuant to a petition filed August 3, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Children and Families, by the Milwaukee Early Care Administration – (MECA) in regards to a determination that the petitioner was overpaid Child Care benefits, a telephone hearing was held on August 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$4,373.57 in Child Care benefits in the period of August 3 – October 31, 2014, due to a client error in under-reporting earned income.

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County. She was the casehead of a Wisconsin Share child care benefits household in Milwaukee, Wisconsin, in the period of August 3 – October 31, 2014, composed of herself and her three minor children. The three minor children were each receiving child care and child care benefits.

2. On July 28, 2014, the petitioner first reported that her weekly earnings at her new job at [REDACTED] was \$692, plus \$100 in commissions, per week. See, Exhibit #1, at pp. 31-33.
3. On November 17, 2014, the agency received paystubs from [REDACTED] that had been pending for two weeks.
4. On December 5, 2014, an agency worker spoke with the petitioner on the telephone and the petitioner confirmed her work status and wages to date, as apparently reported via the November 17, 2014, submission of wage verification.
5. On December 5, 2014, the petitioner first reported that her weekly earnings at her job at [REDACTED] had decreased to \$346.16 per week via ACCESS online change report. No estimated commissions were listed at that time. See, Exhibit #1, at pp. 40-41.
6. On or about December 5, 2014, the Milwaukee agency received an alert from the State Wage Record that the petitioner had received substantially more in earned wages from employment in the 3rd Quarter of 2014 than reported to the county and budgeted by it for Child Care benefits in the petitioner's case based upon the July 28, 2014, income report. See, Exhibit #1, at p. 7; pp. 22 - 3.
7. At no time between July 28 and November 16, 2014, did the petitioner report any other wage or commissions were received than those reported on July 28, 2014.
8. On April 30, 2015, the Department, by its agents, issued an Employer Verification of Earnings request to the petitioner's employer of record in the State Wage Record, "[REDACTED]", requesting verification of her earnings. Also on April 30, 2015, the employer replied that she worked 34 hours per week, earned \$692.31 per week, plus a monthly commission. See, Exhibit #1, at p. 24. Attached thereto was a worksheet showing the petitioner earned a gross pay of: \$5,018.05 in August, 2014; \$4,475.72 in September, 2014; and \$4,273.15, in October, 2014. See, Exhibit #1, at p. 25; and see, Exhibit #1, at p. 6.
9. On June 18, 2015, the petitioner's Wisconsin Shares case was referred to the Milwaukee Early Care Administration (MECA) benefit recovery unit for investigation of an allegation that she had been overpaid Child Care benefits due to underreported income in August – October, 2014.
10. The gross monthly income limit for Wisconsin Shares for a household composed of 4 persons in the period of August – October, 2014, was \$3,975 per month. See, Exhibit #1, at p. 6.
11. On June 19, 2015, the MECA agency issued a Child Care (CC) Client Overpayment Notice and Worksheet to the petitioner informing her that it had determined that she had been overpaid all Child Care benefits issued on her behalf in the period of August 3 – October 31, 2014, due to "Client Error" in misrepresentation of or failure to report, change in household income, and change in employment; i.e., \$4,373.57 of Wisconsin Shares benefits, that she must repay to the Department. See, Exhibit #1, pp. 8-9.
12. On August 3, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the county agency determination that she had been overpaid \$4,373.57 in Wisconsin Share benefits due to a misrepresentation or failure to report changes in income and/or employment.
13. During the period of August 3 – October 31, 2014, the Department actually paid \$4,373.57 in Wisconsin Shares benefits to child care providers on the behalf of the petitioner and her three minor children.

DISCUSSION

All Child Care Benefits 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). The agencies responsible for distributing Child Care Benefits are also required to take all steps necessary to recover funds paid to a childcare provider when the parent was not eligible for the level of benefits issued. Child Care Manual, Chapter 1, 10.3.0.

The county W-2 Agency determined that the petitioner was overpaid this amount of Child Care assistance because she lacked eligibility for Child Care when received from August 3 – October 31, 2014, because she was earning gross income in excess of the income limit for a child care household of 4 persons and had reported less income. The limit was \$3,975 per month. See, Child Care Manual, Chapter 1.6.3 (The maximum income for an ongoing case is 200% of the Federal Poverty Level. The FPL for a family of 4 is \$3,975 per month.) And see, Child Care Manual, Chapter 1.10.4. See also, <http://aspe.hhs.gov/2014-poverty-guidelines>. It is clear from her State Wage Record, and the Employer Verification of April 30, 2015, that her actual gross monthly income *did* exceed this sum in all three months. And in essence, she admits this was so.

She also testified that she reported her base rate (\$692 per week) plus a \$100 per week estimate for commissions when she started the job in July, 2014. See, Exhibit #1, at p. 31 (reverse side).

In addition, it is clear that her household was only 4 persons, and she also admits this was so. See, Findings of Fact Nos. 1-6, above. And see, Exhibit #1, at pp. 12 through 26.

But she never reported any increase in commissions when these commissions in fact went substantially higher in the three immediately subsequent months of August, September and October, 2014. There is no proof that she took any action to report any change in income until her paystubs were submitted on November 17, 2014; and then she filed an ACCESS online income decrease on December 5, 2014, as well. See, Exhibit 1, at pp. 10-11; and pp. 40-41.

Her income was simply too high, and she did not report changes in income that netted \$1,000 - \$1,500 more in income per month than reported by her in late July, 2014 *until mid-November, 2014*, at the earliest. She was required, however, to do so within 10 days of such a change in income that might affect eligibility. See, Child Care Manual, § 1.15.1.

Because of her actual income, she was not eligible for the Child Care paid in these three months. Agency records show that she did not accurately report her monthly commissions from motorcycle sales. Such a business can fairly said to be almost seasonal, i.e., having better sales in summer months than cooler months of the year in the northern Midwest.

Overpaid child care benefits may be recovered, regardless of who was at fault.

Overpayment. Money that the Wisconsin Shares program paid for the care of a child that was more than program requirements indicated should have been paid.

Child Care Manual, § 1.2.0, at p. 17; and see, § 2.1.5.1.

And in any event, the petitioner's income went from nearly \$0 per month at the end of the 2nd Quarter of 2014 (\$692.31 total for the three months) to over \$4,000 per month when she got the job selling motorcycles. Based upon her reported wages, it seems highly likely that \$692.31 wages payment in the Quarter was her first base pay check after starting the job. In addition, the petition had last worked 2nd Quarter of 2013, so her pay had been \$0 per month for of the year preceding the 3rd Quarter of 2014. Basically, she reported earning about \$3,100 per month at start of the job in late July, 2014, but within one month actual income was nearly \$2,000 higher than initially reported and she did not make any subsequent report of this much higher income until mid-November, 2014.

And the petitioner does not contest that she earned the income the agency subsequently found for August, September and October, 2014. Rather, she asserts that she did report her base pay rate at [REDACTED] when she started the job in July, 2014, but she did not know what her sales commissions would be, so she estimated \$100 per week. I.e., she argues that she reported truthfully and accurately at that time. In addition, she asserts that she had an agreement to pay less for child care to the child care provider for her two older children than what the Department paid on her behalf, and therefore it is unfair to hold her to account for the full overpayment found here.

Neither proffered defense possesses any legal merit. First, the overpayment must be recovered regardless of who caused it here. She was overpaid because her income was too high. Period. Second, she failed to timely report within 10 days that her income had changed in an amount that might affect her eligibility for child care, so she did cause the overpayments. Finally, her testimony about a different payment arrangement with her provider was not corroborated by any other written or verbal evidence, and in any event, the agency paid the provider on an enrollment basis and she was unjustly enriched with child care benefits coverage in that sum that she was not eligible to receive when her actual income became apparent. And really, common-sense would inform most public assistance recipients that when they make over \$5,000 per month in wages their eligibility for standard public assistance programs like Food Stamps, BadgerCare and Wisconsin Shares benefits begin to become in question. Such public assistance programs are means tested programs, meaning that how little or how much you earn is the primary focus for gaining eligibility or losing it. And recipients are frequently told they must report changes in income or employment in notices, applications and rights and responsibility statements. Such advisory statements occurred here, too. See, Exhibit #1, at pp. 35, 38(reverse side), 39, 41 (reverse side), 42, 45 (reverse side), and 46.

The petitioner underreported the income she ultimately received, and she took no action to update or correctly adjust her income when it was higher than expected until November 17, 2014. This caused the overpayment of Child Care benefits to her of \$4,373.57 of Wisconsin Shares benefits in the period of August 3 – October 31, 2014, and the Department's overpayment determination in CCO Claim No. [REDACTED] must be sustained.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$4,373.57 in Wisconsin Shares benefits (CCO Claim No. [REDACTED]) during the period of August 3 – October 31, 2014, due to client error, i.e., she underreported her income and actual income exceeded program limits in these three months.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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.

[REDACTED]

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 Madison,
Wisconsin, this 9th day of September, 2015

\sKenneth D. Duren, Assistant Administrator
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 9, 2015.

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