



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 August 24, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to Child Care, a hearing was held on September 22, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of Child Care benefits that occurred because of the agency's error.

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]
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

- [REDACTED]
2. The petitioner was an ongoing recipient of childcare benefits who stopped working on November 19, 2015, because of severe pregnancy complications that led to hospitalization and being bedridden for most of that pregnancy.
 3. The petitioner reported to the county agency on January 6, 2015, that she could not care for her son because of her illness. She confirmed this with documents she sent to the agency on January 8, 2015.
 4. On January 13, 2015, the petitioner asked for 24 hours of childcare a week, the amount she had received while working. The agency allowed this from January 7, 2015, through May 30, 2015.
 5. On January 22, 2015, the petitioner enrolled in the W-2 program. Because she was in the hospital and could not participate herself, her significant other did so for her. She was classified as a W-2 T placement, which is reserved for those who cannot perform independent, self-sustaining work because of employment barriers.
 6. The petitioner did not live with her son's father and had primary placement of the child, with the father receiving visitation every other weekend.
 7. The petitioner's significant other worked 36 hours per week while she was hospitalized. He is the father of the child she was pregnant with during the period of the alleged overpayment. He lives with her.
 8. The petitioner completed her six-month report form for her childcare benefits on May 1, 2015. She remained on bedrest and unable to care for her son at this time. She asked her worker if she needed a doctor's note and was told that she did not. On May 18, 2015, she received paperwork indicating that she remained eligible for childcare benefits.
 9. The petitioner's significant other works almost fulltime.
 10. On July 31, 2015, the county agency notified the petitioner that it would seek to recover \$3,322 in childcare benefits she received from November 23, 2014, through May 31, 2015, because she was not participating in an approved activity.

DISCUSSION

Child Care Benefits are provided to participants involved in approved activities. These include various W-2 activities such as an employment position, or job search, orientation, training, and education activities. Wis. Stat. § 49.155(1m)(a)3. Adults in a two-parent assistance group can be exempt from an approved activity if a physician certifies that she cannot care for the child and cannot participate in an approved activity. *Child Care Manual*, § 1.4.8.10.

The petitioner received childcare subsidies under Wis. Stat. § 49.155. In November 2014, she suffered severe pregnancy complications, was hospitalized and then bedridden throughout her pregnancy, which left her unable to work. She reported this to the county agency, asked for advice from the agency's workers, did everything the agency asked her to do, including obtaining a doctor's statement verifying that she could not work, asked for more advice several months later, and again did everything the agency told her to. Now the agency seeks to recover \$3,322 she received in childcare while bedridden because it determined that she was ineligible for the benefits.

The W-2 statute requires the department to recover all child care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Admin. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules,

regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

The question is whether the petitioner is considered part of a two-parent household. If she is not, she was ineligible for benefits when she was not working and must repay them even though any error occurred because of the agency's errors. She does not live with the father of the child on behalf of whom the payments were made, but she did live with the father of her recent child. In addition, because of her illness and the need to care for her child, he could not have continued working without the childcare provided to her. Policies are not laws. Rather they are meant to carry out the intent of a law. The purpose of the childcare subsidy statutes is to allow adults who must care for children to work. Providing the subsidy to the petitioner while she was bedridden allowed an adult she was about to have a child with work. Although this person was not technically a non-marital co-parent of the child in daycare, his position in the household was virtually identical to one. Non-marital co-parents are considered part of an assistance group. Based upon this, I find that the petitioner was part of two-parent household and thus does not have to repay the alleged overpayment of childcare. *Child Care Manual*, § 1.4.1.

CONCLUSIONS OF LAW

The petitioner did not receive an overpayment of childcare because she was part of two-parent household during the period of the alleged overpayment.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision the county agency certify that it has ended its attempts to recover the \$3,220 in Child Care benefits the petitioner received from November 23, 2014, through May 31, 2015, and that it correct her records to reflect that no overpayment occurred during this period.

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 Madison,
Wisconsin, this 26th day of October, 2015

\sMichael D. O'Brien
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 October 26, 2015.

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