



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/168750

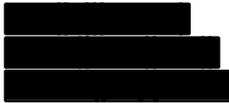
PRELIMINARY RECITALS

Pursuant to a petition filed September 15, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Western Region for Economic Assistance to recover child care assistance, a hearing was held on November 4, 2015, by telephone.

The issue for determination is whether the agency correctly determined a child care overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [Redacted]
La Crosse County Human Services Dept.
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Monroe County.
2. Petitioner received child care assistance through the Western Region for Economic Assistance beginning in April, 2014. On April 23, 2014, she reported working eight hours per day five days per week, with times ranging from 9 a.m. to 11 p.m. In June she updated her request because her older child was out of school for the summer; she reported working 8-5 Monday through Friday. In August, 2014 she had a review. She reported working 9 a.m. to 5 p.m., Friday through

- Tuesday, off on Wednesdays and Thursdays. In April, 2015, she reported working daily 9-5 or 10-6 with some weekends. See Exhibit B.
3. Petitioner's younger son initially was authorized for 45 hours per week child care, and the older one 39 hours. During the summer, 2014, both were authorized for 45 hours per week. When school started in the fall, 2014, the younger son was authorized for 43 hours per week, the older for 25 hours per week. See Exhibit G.
 4. Petitioner's day care provider was open from 6:30 a.m. to 6:30 p.m. seven days per week.
 5. The agency began an investigation in May, 2015 because of the unusual circumstance that 100% of approved day care hours had been claimed by the provider since petitioner became eligible in April, 2014. As part of the investigation it obtained petitioner's time cards from her employer for the period beginning January 25, 2015, through May 30, 2015. Exhibit A. The agency discovered that petitioner worked primarily during the 3 p.m.-11 p.m. shift, with some variance. The agency also obtained the child care provider's sign in/sign out sheets for the period January through May, 2015. Exhibit C.
 6. The agency then requested petitioner's work time cards dating back to April, 2014. It did not receive that information from either petitioner or the employer.
 7. The agency determined an overpayment by counting only work hours between 6:30 a.m. and 6:30 p.m. along with allowed travel time during the period January 25 through May 30, 2015. Paid hours above those times were considered overpaid. Also overpaid were child care hours used on weekends when the children had placement with their father, which the agency determined based upon the placement schedule.
 8. By a notice dated June 19, 2015, the agency informed petitioner that she was overpaid \$1,841 in child care from January 4 through May 30, 2015, claim no. [REDACTED] Exhibit I, page 1. Then on June 22, 2015 the agency sent petitioner a notice telling her that she was overpaid \$3,260 during the same period, with the same claim number. Exhibit H, page 1. The first notice was correct, and claim no. [REDACTED] now shows as \$1,841. Both notices told petitioner that she could appeal within 45 days, or by August 6, 2015.
 9. With no better information, the agency then determined an overpayment for April, 2014 through January, 2015, and June, 2015, by using the same percentage of work times as during the period January through May, 2015. By notices dated August 10, 2015, the agency informed petitioner that she was overpaid \$4,490 in child care from April, 2014 through January, 2015, claim no. [REDACTED], and \$300 in June, 2015, claim no. [REDACTED].

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 §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.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

The agency discovered that the child care provider was billing for the children in care during hours when petitioner was not working, and on days when the children were in the care of their father. Under the rule above, the payments made to the provider during those times were overpayments.

Petitioner testified that the provider was not supposed to bill the Wisconsin Shares agency (Shares is the name of the agency that handles child care subsidy payments) for times she utilized child care but was not working. However, she admitted that the provider never billed her for such times, and she was vague about how often that occurred.

Petitioner also testified that she did not take the children to child care when she was not working, thus calling into question the provider's billing. That issue is between petitioner and the provider. We know that petitioner provided incorrect information about her work hours, and as a result the agency authorized full time care for her children (less school hours) during the hours 6:30 a.m. to 6:30 p.m. We know that petitioner typically worked well past 6:30 p.m., but the provider billed the agency for care provided during the day, when petitioner often was not working. I note that while petitioner questioned the veracity of the caretaker's sign in/sign out sheets, the sheets are remarkably detailed as to arrival and departure times of the children. It is possible that the provider was fudging (after all, she claimed 100% of the authorized hours), but petitioner failed to show that the children were not present those hours, simply by claiming during the hearing that they were not there.

I will uphold the overpayments (the appeal of claim no. [REDACTED] is untimely, but I find it to be accurate nevertheless). If petitioner can come up with proof that the provider was billing for time when the children were not present, then she can present the proof to the agency at any time, and the agency can review the proof, because certainly the agency will be interested if a provider was filing false claims. At this point, however, there is no proof that the provider filed false claims. As noted during the hearing, the matter arose because petitioner reported working during the day when she actually worked primarily evenings. The provider kept detailed sign in/sign out sheets. I have to agree that the overpayment is petitioner's responsibility without evidence to the contrary.

I note that I gave no weight to the CSI investigation report because it appears that the investigator followed the wrong person. The report is irrelevant, however, because the overpayment was determined by comparing petitioner's work hours to the provider's hours of care.

I did find one error. The claims showed January, 2015 being overpaid twice. I will order claim no. [REDACTED] for the period April, 2014 through January, 2015 to be reduced by \$302.44 because that month was included already in claim no. [REDACTED].

CONCLUSIONS OF LAW

Petitioner was overpaid child care because the agency paid for care during hours in which she was not working and in which the children were with their father under the family court placement order.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to reduce overpayment claim no. [REDACTED] from \$4,490 to \$4,187.56, within 10 days of this decision. In all other respects, the petition for review is hereby 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 Madison,
Wisconsin, this 10th day of November, 2015

\sBrian C. Schneider
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 10, 2015.

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