



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/168883

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 22, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Early Care Administration to recover child care assistance, a hearing was held on October 13, 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:   
Milwaukee Early Care Administration  
1220 W. Vliet St., 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner began to receive child care assistance for her daughter as of August 31, 2014. She reported that her address and the child care center address were the same. The child care operator is petitioner's mother.
3. The agency discovered the error in May, 2015, and discontinued the child care authorization.

4. By a notice dated August 31, 2015, the agency informed petitioner that she was overpaid \$6,363.24 in child care assistance from August 31, 2014 through May 31, 2015 due to agency error because the worker who processed petitioner's child care did not check on petitioner's living with the child care provider.

### 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. Under state law child care assistance cannot be paid to a provider for a child who resides with the provider. Wis. Admin. Code, §DCF 201.04(2j)(a)1. Thus the payments issued to petitioner's mother were invalid because petitioner and her daughter live with petitioner's mother. Clearly the worker who processed the application should have caught that petitioner's address and the child care center address were the same, and thus the overpayment occurred due to agency error. Nevertheless, the agency must recover the overpayment regardless of who made the error.

I must conclude that the agency correctly determined the overpayment in this case.

### CONCLUSIONS OF LAW

Petitioner was overpaid child care assistance because the care was provided by the child's grandmother, with whom both petitioner and the child live; the claim must be made by the agency even though the overpayment resulted from agency error.

**THEREFORE, it is**

**ORDERED**

That 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 15th day of October, 2015

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\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 October 15, 2015.

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