



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/169175

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 30, 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 October 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$724.99 for the period from July 6, 2014 through July 12, 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: Sheila Easley

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 September 3, 2015 the agency sent the petitioner a child care overpayment notice stating that the petitioner was overpaid \$724.99 in childcare benefits for the period from July 6, 2014 through

July 12, 2014. The notice stated that the overpayment was due to client error. The petitioner's employment at [REDACTED] ended on July 1, 2014. She started a new job at [REDACTED] on July 17, 2014. Between July 6, 2014 and July 12, 2014 the petitioner's children attended childcare when the petitioner was not in an approved activity.

3. On October 5, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### 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. Adm. 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. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

In order to qualify for child care assistance, the recipient must be in an "approved activity." *Child Care Manual* § 1.5.0 (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed September 2015)). The term "approved activity" is a term of art in child care assistance cases. *Id.* Approved activities include employment with a qualified employer or if the parent needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. *Id.* at § 1.5.3.1 and § 1.5.4.

In this case the issue is that the petitioner was not an approved activity and continued to send her children to child care. The petitioner's employment with [REDACTED] ended on July 1, 2014. There is no overpayment between July 1, 2014 and July 5, 2014. Beginning July 6, 2014 the petitioner sent her children to child care while she was looking for a new job. She testified that she needed childcare because she had job interviews scheduled during that time. She found a new job and started that job on July 17, 2015. The overpayment is only between July 6, 2014 and July 12, 2014 because the petitioner was not in an approved activity. This overpayment amount is over \$700 for such a short period because the petitioner had four children attending daycare.

### CONCLUSIONS OF LAW

The agency correctly assessed a child care overpayment in the amount of \$724.99 for the period from July 6, 2014 through July 12, 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 29th day of October, 2015

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\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 October 29, 2015.

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