



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/169222

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on October 28, 2015, by telephone.

The issue for determination is whether the agency correctly determined a child care overpayment that occurred when petitioner's Wisconsin Works (W-2) employability plan had her on medical restrictions.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
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 # [Redacted]) is a resident of Milwaukee County.
2. In the summer, 2015, petitioner received child care assistance for her two children. During that time petitioner was participating in the W-2 program; child care was authorized for 40 hours per week on an attendance basis.

3. On July 14, 2015 petitioner submitted a medical statement to the W-2 agency saying that she was on full medical restrictions. The agency immediately changed her W-2 status to full restriction, meaning that she did not have to participate in W-2 activities.
4. Petitioner's W-2 case manager told her that despite the change in status she could continue working on her GED assessment and could use child care while doing so. Petitioner continued to use child care for her two children.
5. Petitioner completed a "TABE" school assessment on July 23, 2015. She stopped using child care after that week.
6. By a notice dated September 28, 2015, the agency informed petitioner that she was overpaid \$523.22 in child care for the period July 12 through July 31, 2015, claim no. 0900440340. The claim was for all child care paid during the two week period July 12 through July 26, 2015.

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's position is that petitioner was put on full W-2 restriction for the period beginning July 12, 2015 (actually it was backdated because petitioner also was given good cause for not participating in W-2 the week before July 12). Petitioner took her children to day care until July 25 despite being on W-2 work restriction in which she was not required to do work-related activities.

Petitioner testified that her W-2 case manager told her on July 14 that although the medical excuse was accepted and she was placed on full restriction, she nevertheless could continue her school-related activities. That is why petitioner kept taking the children to day care. She testified also that she continued to attend GED enrollment and orientation. Petitioner's case manager confirmed his instructions to petitioner in a letter dated October 29, 2015, including acknowledging that he told petitioner that she could use child care.

I conclude that the overpayment should be rescinded. While the agency argues that petitioner was not entitled to child care because she did not abide by her plan of full restrictions, petitioner nevertheless should not be penalized because she continued to do activities based upon her case manager's

recommendations. Despite her employability plan, petitioner continued to do W-2 activities for the two weeks in question.

CONCLUSIONS OF LAW

Petitioner was not overpaid child care in July, 2015 because although her W-2 employability plan was changed to remove work activities, she nevertheless continued to do school-related activities for two weeks with the approval of her W-2 case manager.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to rescind overpayment claim no. 0900440340 within 10 days of this decision.

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 5th day of November, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 5, 2015.

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