



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/169538

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 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 November 10, 2015, by telephone.

The issue for determination is whether petitioner was overpaid child care during a period when she was unemployed.

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. Petitioner cares for five grandchildren. She was authorized for child care assistance in late December, 2014 for her to work at [Redacted]
3. The [Redacted] job ended effective March 24, 2015 when the business was forced to close. Petitioner did not report the end of the work to the child care assistance agency. She continued to take the children to the child care center.

4. In May petitioner reported that she returned to work at her former job at [REDACTED] on April 27, 2015. It was then that the agency worker found out that petitioner had been unemployed for 4½ weeks.
5. By a notice dated September 11, 2015, the agency informed petitioner that she was overpaid \$3,144.77 in child care assistance from March 29 through April 25, 2015, claim no. [REDACTED]. The claim was for all assistance paid during that period when petitioner was not working.

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 caretaker 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 caretaker was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

Clearly petitioner was not working during the four weeks in question. She testified that she did not want to remove the children from care because she would lose her spot at the center. She could be called back to work at [REDACTED] at any time with short notice and she could not get child care on short notice.

Those factors could have been considered had petitioner contacted the child care agency when the [REDACTED] job ended. A child care worker could have addressed the issues and perhaps care could have been arranged if petitioner was called back by [REDACTED] on short notice. However, because petitioner did not notify the agency, instead she used child care inappropriately for four weeks. Under the law, she was not eligible to use the care during that time period, and the law does not provide for good cause child care usage, at least not retroactively.

I must conclude that the overpayment was determined correctly. Petitioner utilized child care during a period when she was not working or in W-2 activities, and the law requires the cost of those services to be recovered.

CONCLUSIONS OF LAW

The agency correctly determined a child care overpayment during a period when petitioner utilized services when she was not working or in W-2 activities.

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 13th 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 13, 2015.

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