



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/168706

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 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 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

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: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice dated September 29, 2015 that informed her that she had been overissued child care benefits in the amount of \$4330.90 for the period of October 5, 2014 to February 28, 2015.

3. The reason for the overissuance alleged here is that Petitioner failed to accurately report earned income.
4. Petitioner reapplied for child care in early October 2014 after her child care case had closed in July 2014 for failure to complete a review. The new application was approved.
5. In her October 2014 reapplication Petitioner reported 2 employers – a Milwaukee area cemetery and a Milwaukee area restaurant. Petitioner reported working at the cemetery 72 hours per pay period at a rate of \$10.00 and that she was paid bi-weekly – this is \$1548.00 per month (\$10 x 72 x 2.15 pay periods per month). She reported \$2.50 per hour at the restaurant and that she works 34.68 hours per week and is paid twice a month. She reported no tips. The agency determined the restaurant income to be \$173.40 per month (\$2.5 x 34.68 x 2). Thus total income was determined to be \$1721.40 when the agency determined child care eligibility (for eligibility 185% of the Federal Poverty Level is the standard, see *Manual*, §1.6.2; \$2425.00 in 2014 per Ops Memo 14-05).
6. In the 4th quarter of 2014 Petitioner’s employers reported total wages of \$9685.59 (\$8928.45 from the cemetery and \$757.14 from the restaurant) and in the 1st quarter of 2015 those two employers reported total wages of \$10,495.87 (\$10,188.54 from the cemetery and \$307.33 from the restaurant). The agency was not able to obtain biweekly pay detail from the cemetery so used averages in its calculations but did obtain the payroll records from the restaurant so used the actual bi-monthly wage records.
7. Petitioner submitted paycheck stubs from the cemetery for the period involved here at the hearing. Those payroll records show the following gross earnings: October 2014 - \$3529.92 [it does appear that October 2014 was a 3 check month and the first October 2014 paycheck stub was not submitted but, based on year to date figures and State wage records it does not appear that income exceeded the income limit until the October 31, 2014 paycheck]; November 2014 - \$1990.24, December 2014 - \$2092.66; January 2015 - \$3262.06 and February 2015 - \$3491.14.
8. Petitioner’s household consists of 2 – herself and her child.
9. The gross income limit for ongoing child care eligibility is 200% of the Federal Poverty Level - \$2622.00 for a group of 2 as of February 1, 2014 and \$2555.00 as of February 1, 2015. The gross income limit for initial eligibility is 185% of the Federal Poverty Level or \$2425.00 through 2014 to February 1, 2015. See Operations Memo #s 14-05, dated February 21, 2014 and 15-08, dated March 3, 2015; respectively.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

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 the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *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 or whose error caused the overpayment. *Wis. Admin. Code*, § DCF 101.23(1)(g). All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see*,

Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1. [The Manual has been updated but the references in this Decision are to the manual in effect at the time of circumstances here.]

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes provisions that note an ongoing eligibility limit of 200% Of the Federal Poverty level (*Manual*, §1.6.3) and that require that a parent report changes within 10 days if the change could affect eligibility and that requirement included an increase in income of \$250.00 or income exceeding 200% of the Federal Poverty Level (*Manual*, §1.15.2). Additionally, the *Manual*, at § 2.1.5.1 requires that the overpayment start with the 1st full week after wage changes that were to be reported. *Manual*, §2.1.5.1. If regularly received income fluctuates an average is to be used for child care purposes. *Manual*, §1.6.7.

Petitioner testified that her income fluctuates. She did submit paycheck stubs for the period of the overpayment at the hearing. Those check stubs do show income fluctuation and that to the point of application in October 2014 Petitioner’s income was under the applicable income limits; nonetheless, substantial commission payments certainly began in mid-October 2015. As of the third check in October 2014 (the 10/31/14 check) Petitioner’s income exceeded the 200% of the FPL level. Further, income increased by more than \$250.00. Petitioner did not report this but had she reported it within 10 days as required she would not have been eligible for child care. The *Manual*, at §2.1.5.1, requires that the overpayment begin with the date of the change if not reported timely – here that would have been November 1, 2014 based on the October 31, 2014 pay date.

I am concluding that Petitioner was overissued child care benefits as of November 1, 2014. She would not have been over the 200% FPL gross income limit of \$2622.00 until receipt of the paycheck stub dated October 31, 2014. As an aside – at that point she would have been ineligible going forward until she reapplied and demonstrated income below the 185% threshold. As her income was fluctuating at the time an average would had to have been used (see *Manual*, §1.6.7) – approximately \$2537 for the months of October – December 2014 based on the cemetery alone. The overpayment claim here will have to be adjusted to remove the month of October 2014 overpayment of \$844.41.

CONCLUSIONS OF LAW

That the evidence demonstrates that the agency correctly seeks recovery of an overpayment of child care as Petitioner failed to report a change in income but the beginning date of the overpayment must be adjusted so as to exclude October 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to adjust the overpayment period involved here so as to exclude the month of October 2014. This must be done within 10 days of the date of this Order.

In all other respects, this appeal 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 8th day of January, 2016

\sDavid D. Fleming
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 January 8, 2016.

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