



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

CCO/171412

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration ["MECA"] in regard to Child Care ["CC"], a Hearing was held via telephone from Madison, Wisconsin on February 16, 2016.

The issue for determination is the following Claim may be established against petitioner for overpayments of CC: Claim # [redacted]; December 7, 2014 to March 7, 2015; \$1,164.64.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: [redacted] Child Care Subsidy Specialist, Senior
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 45 years old) is a resident of Milwaukee County, Wisconsin.
2. MECA established the following Claim against petitioner for overpayments of CC: Claim # [REDACTED]; December 7, 2014 to March 7, 2015; \$1,164.64.
3. Petitioner's spouse is adult male WJ.
4. Petitioner and WJ lived together during the time period relevant to the CC overpayment listed in *Findings of Fact #2*, above.
5. WJ was not in an approved activity during the time period relevant to the CC overpayment listed in *Findings of Fact #2*, above.

DISCUSSION

The County or agency must determine whether an overpayment of CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2013-14); See also, Wis. Admin. Code §§ DCF 101.23 (October 2015) & 201.04(5)(a) (March 2016); *Wisconsin Shares Child Care Assistance Manual* ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code §§ DCF 101.23(1)(a), (3)(c) & (g) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1. & 2.1.5.2.

In two-parent families both parents must meet all CC eligibility criteria. Wis. Admin. Code § DCF 101.26(1) (October 2015); CC Manual 1.4.8.2.; See also, Wis. Stat. § 49.155(1m)(d) (2013-14).¹ By policy a *Family or Family Group* includes any nonmarital coparent or any spouse who resides in the same household. CC Manual 1.2.0.

A person is eligible for CC only if the person is participating in an approved activity (such as employment). CC Manual 1.4.8 (2015); See also, Wis. Stat § 49.155(1m)(a) (2013-14); Wis. Admin. Code § DCF 101.26(1) (October 2015); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (March 2016). In two-parent families both parents must meet all CC eligibility criteria. Wis. Admin. Code § DCF 101.26(1) (October 2015); See also, Wis. Stat. § 49.155(1m)(d) (2013-14).

Petitioner does not claim that WJ was in an approved activity. However, petitioner maintains that WJ did not live with her during the time period in question.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The burden is on the County to show that WJ lived with petitioner during the time period in question. The County has more than satisfied this burden. Therefore, it must be concluded

¹ The only exception to this two-parent family rule is if it is verified that one parent has a disability or health condition that makes that parent unable to participate in required activities and that parent is also unable to provide the child care necessary for the other parent to participate in required activities. Wis. Admin. Code § DCF 101.26(1) (October 2015); Manual 1.4.8.2. The parent's inability to participate in required activities and to provide child care must both be verified by a doctor, psychiatrist, or psychologist. Manual 1.4.8.2. Petitioner makes no claim that either she or WJ has such a disability or health condition.

that WJ lived with petitioner during the entire time period in question and, therefore, the CC overpayment must be sustained.

The County presented convincing evidence that establishes that WJ lived with petitioner. This includes the fact that WJ had an open Food Stamp ["FS"] case using the same address as petitioner and which included petitioner as part of WJ's FS household. This also includes social media posts, documentation from the Wisconsin Department of Transportation ["DOT"], and the fact that no alternative address was provided for WJ

Petitioner testified that WJ was not in her home. She provided a *Lease* for the lease period December 2013 to November 2014 -- a time period which was different than the overpayment time period of December 7, 2014 to March 7, 2015 (the *Lease* listed petitioner as "Lessee(s)" but did not specify who lived in the leased unit). Finally, she provided a written statement from WJ stating that he did not reside at petitioner's address and only used her address for mail (the statement failed to state where WJ lived during the time period in question only that he had "no permanent address"). The preponderance of the credible evidence is that WJ lived with petitioner during the time period in question.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for overpayments of CC: Claim # [REDACTED]; December 7, 2014 to March 7, 2015; \$1,164.64.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same 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 21st day of April, 2016

\sSean P. Maloney
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 April 21, 2016.

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