



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/172715

PRELIMINARY RECITALS

Pursuant to a petition filed March 9, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Jackson County Department of Human Services in regard to Child Care (CC), a hearing was held on April 21, 2016, at Black River Falls, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of Child Care Benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

Jackson County Department of Human Services  
420 Hwy 54 West  
Po Box 457  
Black River Falls, WI 54615

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Jackson County.
2. The department seeks to recover \$14,846 in Child Care Benefits provided to the petitioner and his girlfriend from August 1, 2013, through January 31, 2014.

3. The petitioner and his girlfriend care for her grandchild. As a condition for taking the child into their house, the told the county agency worker that they needed help with childcare because they both were employed.
4. During the period in question, the petitioner and his girlfriend had a foster care license, but her grandchild was not in foster care.
5. The household income of the petitioner and his girlfriend exceeded 200% of the federal poverty level during the entire period in question. The income of the child's birth mother was under 200% of the federal poverty level during this period.
6. The Child Care Benefits the petitioner received from August 1, 2013, through January 31, 2014, did not improve his financial condition above what it would have been if he had not cared for his girlfriend's grandchild.

### DISCUSSION

Child Care benefits subsidize child care costs for W-2 participants who are working in unsubsidized employment or various approved programs. Wis. Stat. § 49.155(1m)(a). The income limit is usually 185% of the federal poverty level for new applicants and 200% of federal poverty level for those already receiving benefits. That limit is usually based upon the income of the adult caring for the child. Wis. Stat. § 49.155(1m)(c)1.

But there are exceptions. Sometimes the income limit is based upon the income of child's biological or adoptive parent, even if that parent is not the one caring for the child. In those situations, the income limit for both new and continuing recipients is 200% of the federal poverty level. These special rules apply to a "foster parent of the child or subsidized guardian or interim caretaker of the child under s.48.623." They also apply to a relative providing care under a court order and receiving Kinship Care payments. Wis. Stat. §§ 49.155(1m)(c)1g and 1h. (Section 48.623 pertains to subsidized guardianships; Kinship Care provides a subsidy to relatives who care for a child for whom they are not legally responsible.)

The petitioner lives with his girlfriend and they care for her grandchild. They obtained temporary, subsidized guardianship over her and had a foster care license. Because they both worked, and paying for childcare would create a financial hardship, they eventually also received Child Care Benefits. In August 2013, their subsidized guardianship was replaced with an unsubsidized guardianship. They did not realize that when the subsidized guardianship ended, they no longer were considered foster parents. They could have received Kinship Care, but they did not think the subsidy was financially necessary for them as long as they received Child Care Benefits. When they were asked to verify that they were foster parents, they sent the agency a copy of their foster care license, which they continued to hold. Throughout this period, they kept their worker informed about the various legal changes and were assured that they remained eligible for Child Care Benefits.

But now the department says they weren't.

It contends that once the petitioner and his girlfriend's subsidized guardianship ended, their Child Care eligibility depended upon their own income, which they concede exceeded 200% of the federal poverty level. Wisconsin law requires the department to recover all overpayments from those who receive benefits they are not entitled to. Wis. Stat. § 49.195(3). The department seeks to recover the \$14,846 in benefits they received from August 1, 2013, through January 31, 2014.

The laws allowing Child Care Benefits to be based on the birth parent's income are meant to ensure that a responsible adult will care for a child whose parent cannot provide that care. The county social services agency asked the petitioner and his girlfriend about caring for her grandchild. They indicated that they

would consider doing so, but, because they both worked, they would need help with childcare. They turned down chances to obtain other subsidies to help them raise the child because they were not interested in getting paid for their service. Rather, they hoped that, by receiving Child Care subsidies, they could provide this care without enduring financial hardship. They are exactly the type of people the special income rules of the program are meant to help. And throughout the time they received the benefits, the agency worker assured them that this help was available and continued to provide this assurance after their guardianship status ended. Because of their lack of interest in extra income, they now face a nearly \$15,000 overpayment claim.

I find that the department cannot recover this claim because, in the end, the petitioner did not actually receive a benefit. Rather, the subsidy left him and his girlfriend close to the financial position they would have been in if they had not volunteered to help a child they had no obligation to help. In reality, if anyone received help, it was the county agency which, without the care provided by the petitioner and his girlfriend, would have had to provide foster care and other assistance for the child.

### CONCLUSIONS OF LAW

The county agency cannot recover the \$14,846 in Child Care Benefits provided to the petitioner and his girlfriend from August 1, 2013, through January 31, 2014, because they received no net benefit from the program.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions to it end its attempts to recover the \$14,846 overpayment of Child Care Benefits the petitioner allegedly received from August 1, 2013, through January 31, 2014. The agency is also instructed to revise any records necessary to reflect that no such overpayment occurred. It shall perform both actions within 10 days of the date 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**

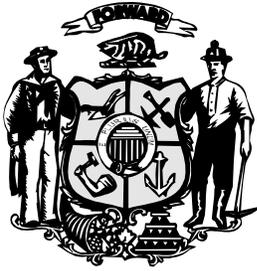
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** 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 1st day of June, 2016

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\sMichael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 1, 2016.

Jackson County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud