



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION
Case #: CCO - 173318

PRELIMINARY RECITALS

On March 29, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Portage County Department of Human Services regarding Child Care. The hearing was held on May 24, 2016, by telephone.

The issue for determination is whether the agency met its burden to establish the Child Care overpayment claim of \$2,402.65.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Portage County Department of Human Services
817 Whiting Avenue
[REDACTED], WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.

2. During the period of the overpayment claim, the petitioner was participating in CC approved activities.
3. O'Brien and Associates completed an investigation and determined that [REDACTED] lived in the home from 5/1/15 to 9/31/15.
4. Someone completed a child care overpayment claim (overpayment notice was not submitted as evidence by the agency) in the amount of \$2,402.65.
5. Petitioner appealed.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

The agency's case of CC overpayment was disjointed. The agency failed to provide a copy of the overpayment notice in advance of the hearing and it seemed that between the county representative and two investigators no one was quite sure who could provide which facts to paint a somewhat persuasive picture.

The county's overpayment claim was based on the allegation of residence of the father, [REDACTED] in the home with petitioner and the children. Petitioner's contention is that [REDACTED] did not live with her during the period of the overpayment claim which is May 1, 2015 through September 30, 2015. If the agency establishes that the father lived in the household during the overpayment period, and that he did not participate in approved activities, then the overpayment may stand.

The investigator provided the evidence in the record to support the claim of [REDACTED]'s residence in the home on [REDACTED] during the overpayment period. The documentary evidence included WI court records showing [REDACTED]'s address on [REDACTED] relating to charges filed in February and May of 2015. The Department of Transportation also shows a vehicle registered to [REDACTED] at the [REDACTED] address in August 2015. The investigator also provided one or two Internet lookup results showing the [REDACTED] address. These carry no weight as such services frequently simply consolidate data from other sources on the web. Indeed, one of the results provided by the investigator appears to be a result designated TLOxp-People and shows at least three different addresses for [REDACTED] during the overpayment period, one of which is the [REDACTED] address.

The investigator did not interview petitioner or [REDACTED] as part of his investigation. He testified that he left a business card at the residence but no one returned the call. He also stated that he interviewed petitioner's landlord and neighbors. At hearing, there was live testimony of [REDACTED] who is the landlord for petitioner and owns the home on [REDACTED] in [REDACTED]. She testified that she went to the home occasionally to complete a repair of for some other reason that [REDACTED] was present. She stated that during the overpayment period she went by the house no more than three times and he was there each time. She also stated that [REDACTED] told her that he did not live there but was present to help petitioner with something in the home or help the kids off the bus or babysitting his kids. [REDACTED] stated that "far as I know, she lived there alone."

At hearing, there was testimony by [REDACTED] who is a neighbor of petitioner. [REDACTED] testified that she worked part-time and was a full-time student. She explained that she would see [REDACTED]'s car parked at the building or would see him coming or going. She remembered seeing him around the apartment. She stated that she has never spoken with [REDACTED] or petitioner. She stated that she recalls seeing [REDACTED] there for a few days and then he would be gone for a while. She described the situation as one where he would come and go.

Overall, the county's case was simply not sufficient to meet its burden given that petitioner specifically disputed that [REDACTED] lived with her during the overpayment period. I find petitioner's testimony credible and logical in her stating that [REDACTED] is the father and would frequently be present for parenting-related duties. This does not make someone a resident of a home or household. I also find the documentary trail to be lacking. Petitioner explained that [REDACTED] does not have a regular address. I am not surprised that he would provide a stable mailing address to a police officer at the time of police contact.

I note that there was no evidence submitted that suggested that [REDACTED] was not participating in approved activities or that his income, if any, would have made the household ineligible for CC. It is possible that even if he were in the household that the petitioner would still have been eligible for CC.

CONCLUSIONS OF LAW

The agency failed to meet its burden to establish the overpayment.

THEREFORE, it is

ORDERED

The matter is remanded to the agency with direction to reverse the overpayment claim and cease all collection efforts. Any sums already recouped must be returned. These actions must be completed within 10 days.

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, **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 18th day of July, 2016

\s _____
John P. Tedesco
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 July 18, 2016.

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