



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/174219

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover child care assistance, a hearing was held on June 2, 2016, at Janesville, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether petitioner was overpaid due to failing to report accurate household members.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.
2. Petitioner began to receive child care for her two children on July 26, 2015. At application she reported that she lived with her children and her parents. Child care was opened based upon a household size of three.
3. On June 15, 2015, the father of petitioner's children (J.J.) applied for FoodShare using petitioner's address. He reported that he lived alone. In September, 2015 the child support agency

informed the economic support agency that J.J. reported that he lived with petitioner. The county then requested an investigation.

4. Investigator [REDACTED] spoke with three neighbors who reported that they believed that a black guy lived in the home but that he was “in and out.” Mr. [REDACTED] did not speak with petitioner or her parents. One neighbor reported that the black man had left for good in September after a disturbance; that date corresponded approximately with J.J. reporting a new address to the Rock County Circuit Court on September 10, 2015.
5. The county found that J.J. reported on his FoodShare case that he last worked May 31, 2015.
6. Based upon the investigation and J.J.’s self-reporting, the county determined that J.J. lived with petitioner in the summer, 2015 through September 10, 2015. It determined that all child care paid from July 26 through September 30, 2016 was overpaid. By a notice dated April 12, 2016, the county informed petitioner that she was overpaid \$3,631 in child care during that period, claim no. [REDACTED].

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 parent 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 parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

If J.J. lived with petitioner during the period in question all child care would be an overpayment because he was not in an approved activity. The issue is whether J.J. lived with petitioner. I conclude that the evidence does not support the conclusion. The situation was suspicious, but I cannot make a finding based upon suspicion.

The only documentary evidence tying J.J. to petitioner’s home was provided by him. Petitioner and her step-mother testified that they did not authorize J.J. to use her address for mail or other activities, and in fact that was part of the dispute in September. They both acknowledged that J.J. spent time at the residence but at no time did he actually live there. There is nothing tying petitioner affirmatively to him living there; she did not report to any entity that he lived with her, and she did not admit that she allowed him to use her address. It all depends on J.J.’s own actions and reports.

The statements by the neighbors are hearsay, and even on their merits do not conclusively support a finding that J.J. lived in the home. A black man going in and out of the home is not conclusive evidence that this particular person lived there.

I conclude that the county has not shown that J.J. lived with petitioner, and thus she was not overpaid child care assistance.

CONCLUSIONS OF LAW

There is insufficient evidence to support a conclusion that the father of petitioner's children lived with her in the summer, 2015, and thus the overpayment claim based upon the living situation must be rescinded.

THEREFORE, it is ORDERED

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED], and to cease recovery of it. The county shall do so within 10 days 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 9th day of June, 2016

\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 June 9, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud