



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

#: CCO - 175491

PRELIMINARY RECITALS

Pursuant to a petition filed on July 13, 2016, under Wis. Admin. Code § HA 3.03, to review decisions by the Dane County Dept. of Human Services that the petitioner was overpaid Child Care (CC) benefits, a telephone hearing was held on August 24, 2016.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$10,656.77 in Child care benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] Overpayment Specialist
Dane County Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County. She is the casehead of a Wisconsin Shares child care assistance group composed of herself and a minor adopted child. The household was receiving child care benefits during the periods of August 1, 2014 – June 30, 2015; and again from July 10 - December 31, 2015.
2. On June 2, 2016, the county agency issued two Child Care Overpayment Notices to the petitioner informing her that it had determined that she had been overpaid \$6,866.77 in child care in the

- period of August 1, 2014 – June 30, 2015; and \$3,790 in the period of July 1 – December 31, 2015; both due to client errors in failing to report household income exceeding program limits.
3. At all times between August 1, 2014 and December 31, 2015, the petitioner’s actual gross monthly income exceeded 185% of the Federal Poverty Level for a two person household, i.e., \$2,425 from July, 2014 through January, 2015, and \$2,456 from February – December, 2015. See, Exhibits #1A & #2D.
  4. The petitioner’s gross monthly income exceed 200% of the Federal Poverty Level for a two person household, i.e., \$2,622 from July, 2014 through January, 2015, and \$2,655 from February – December, 2015, during the months of September, 2014 – January, 2015, March – October, 2015, and December, 2015. See, Exhibit #1A & #2D.
  5. At all times relevant during the two overpayment periods tested, the petitioner received regular income paid bi-weekly, plus irregular contract pay for Chapters 51 & 55 commitment work that varied in amount and frequency, also paid by the same employer provider her regular income for work performed on a salary basis, and later an hourly pay basis, for her work as a [REDACTED] at a [REDACTED]. Further, she never reported the “contract income” as part of her application or six month report form information about her wages, or filed change reports when her gross income exceeded 200% of the Federal Poverty Level. See Exhibit #2D.
  6. On July 13, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determinations made by the county agency as described in Findings of Fact No. 2, above. She asserted as a defense that a child care intake worker had informed her she did not need to report the sporadic income received for her contract work for commitment cases.

### DISCUSSION

All Child Care Benefits 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. Wis. Stat. § 49.155(1m). **All overpayments must be recovered, regardless of fault, agency or client error.** See, Wis. Admin. Code §DCF 101.23(5).

The county agency determined that the petitioner was overpaid this amount of child care assistance because she had not accurately and timely reported that her income included a portion that was fluctuating income. In fact, she received what she called “contract income” for professional piece-work that she did in the area of legal commitments that was neither consistent or predictable in frequency or amount. By written program policy, such income must be reported as actual income only for the month in which it is actually received.

If neither the amount nor the frequency is consistent or predictable, count it only for the month in which it is received as non-recurring income.

*Wisconsin Shares Child Care Subsidy Policy Manual*, Chapter 1, §1.5.5.2. (Note: Quoted in the part relevant here.)

These payments were not regular in frequency or in paid amounts, fluctuating wildly. See, Exhibit #2D.

The petitioner testified that she believed she was misled by an agency intake worker who verbally informed her that she did not need to report such income if it was sporadic and not regular. In short, she asserts that the agency should be equitably estopped from collecting the overpayment because she was misled by an agency employee, to her ultimate detriment.

First, it matters not whether the overpayment is caused by the agency or the client, it must be recovered under law. Wis. Admin. Code §DCF 101.23(5).

Second, the Division's administrative law judges do not possess any equitable powers. Rather, they must apply the law as it is written.

No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds.

*American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). Thus, I cannot make a determination on the basis of fairness.

And finally, even were I to possess equitable powers, I would not find this action to be unfair.

The petitioner was an applicant informed in the ways of social service by background and experience. In addition, she was repeatedly informed in application and six month report form warnings of the need to report changes in income and in particular to child care, changes in bonuses and/or commissions, or other income that affected her eligibility for child care. See, for example, Exhibits #2A, #2B, #3, #5 & #6. And *any income* that placed her above 200% of the Federal Poverty Level must be reported as the ongoing responsibility of any child care recipient. See, *Wisconsin Shares Child Care Subsidy Policy Manual* § 1.5.1.2; and see, *Ibid.*, at §1.9.1.

If the petitioner as applicant had correctly reported her actual income, or reported any changes of income when she exceeded 200% of the Federal Poverty Level, her ineligibility would have been discovered long before such a large overpayment was amassed. In addition, even in the beginning, her income level as determined on the income she did report was very, very close to the income limit, and the recipient should have been cognizant of the fact that very little in the way of additional income would trigger ineligibility for her.

The long and short of this is that she was never actually eligible for child care benefits when her actual income was used on a monthly basis, and she met no standards for averaging or other treatments of her varied in amount and frequency contract income. See, Exhibit #7. She exceeded the applicable income limits at all times, including the initial application month. See, *Wisconsin Shares Child Care Subsidy Policy Manual* § 1.5.1.1 & 1.5.1.2 ("Gross Income"); and see, Exhibit #1A. The agency overpayment determinations must be sustained under these facts.

### **CONCLUSIONS OF LAW**

That the county agency correctly determined that the petitioner was overpaid \$10,656.77 in Wisconsin Shares child care benefits from August 1, 2014, through December 31, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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, **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 8th day of September, 2016

\s \_\_\_\_\_  
Kenneth D. Duren  
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 September 8, 2016.

Dane Cty. Dept. of Human Services  
Public Assistance Collection Unit  
Child Care Fraud