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[REDACTED]

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

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In the Matter of  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: CCO - 177174

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 5, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department regarding Child Care (CC), a hearing was held on November 10, 2016. The record was held open for the Petitioner to submit additional evidence. On or about November 23, 2016, the Petitioner submitted additional evidence. A second hearing was held on December 19, 2016, by telephone. The record was held open again post-hearing for 30 days for the Petitioner to submit additional evidence. No evidence was submitted and the record was closed.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits in the amount of \$496.43 for the period of September 13, 2015 – April 30, 2016.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
[REDACTED] [REDACTED]

Respondent:

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

By: [REDACTED]  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:  
Debra Bursinger  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On or about September 11, 2015, the Petitioner applied for child care benefits for her granddaughter. She reported her employment was Monday – Thursday, 7 a.m. – 5:30 p.m., 40 hours/week.
3. On September 16, 2015, the Petitioner submitted her work schedule reporting that she works from 7:00 a.m. – 5:30 p.m., Monday – Thursday. For Fridays, she reported she is “on call”.
4. On September 21, 2015 and October 26, 2015, the agency issued authorization notices to the Petitioner informing her that she was eligible for child care benefits for her granddaughter with an enrollment-based authorization for 40 hours/week, September 13, 2015 – October 31, 2015.
5. On November 7, 2015, the Petitioner submitted her work schedule and her daughter’s school schedule. She reported her employment was Monday – Thursday, 7 a.m. – 5:30 p.m., 40 hours/week. She reported her daughter’s school schedule was Monday – Thursday, 7:50 a.m. – 3:20 p.m. and Friday, 7:50 a.m. – 1:00 p.m.
6. On November 9, 2015, the agency issued an authorization notice to the Petitioner informing her that she was eligible for child care benefits for her granddaughter with an enrollment-based authorization for 40 hours/week, November 1, 2015 – April 30, 2016.
7. On January 18, 2016 and February 15, 2016, the agency issued authorization notices to the Petitioner informing her that she was eligible for child care benefits for her granddaughter AP with an enrollment –based authorization for 37 hours/week, January 31, 2016 – April 30, 2016.
8. On September 16, 2016, the agency issued a Child Care Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$496.43 for the period of September 13, 2015 – April 30, 2016 due to a non-client error in determining Petitioner’s eligibility.

## **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 CC 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.

An “assistance group” for purposes of determining eligibility and authorizations for child care can include: an individual who is a parent caring for a child, the individual's dependent children and any dependent children of the individual's dependent children. Wisconsin Shares Child Care Manual (CCM), § 1.4.1.

This case involves a three-generation family: the Petitioner, her daughter and her granddaughter. The CCM states as follows with regard to this situation:

#### 2.2.4 Two-parent Families and Three-Generation Families

A child care agency must only authorize child care in two-parent families- and three-generation families for the period of time during the overlap of approved activities of both/all parents.

In this case, the agency asserts that it erred when it authorized the Petitioner's granddaughter for 40 hours/week of child care subsidies because it incorrectly considered the Petitioner's daughter's school schedule and the Petitioner's work schedule in determining the hours of authorization. The agency authorized 40 hours/week based on the incorrect assumption that the Petitioner works every Friday. The Petitioner submitted work schedules indicating that she was "on call" for Fridays. Though the Petitioner's authorization was for 40 hours/week, the provider was paid for 35 hours/week. The agency asserts that she was eligible for 32 hours/week (8 hours/day Monday – Thursday). The overpayment sought by the agency is 3 hours/week for the period of September 13, 2015 – April 30, 2016.

At the hearing, the Petitioner testified that consideration was not given for her overtime hours or for those Fridays when she did work. She testified that in September, 2015, it was mandatory to work on Fridays. However, she also testified that she generally worked 2 Fridays/month. The record was held open post-hearing to allow the Petitioner to submit evidence of actual time worked during the overpayment period. Subsequent to the first hearing, the Petitioner submitted a statement from her employer that "[t]hroughout the year – especially during peak season – [REDACTED] has been asked to work mandatory overtime on several Fridays in order to fulfill our customer orders. During peak season, associates are frequently scheduled 50 – 60 hours per week, and may be required to work 11 hours shifts from 6:00 a.m. to 5:30 p.m."

At the second hearing in this matter, the agency testified that the employer statement was not sufficient in detail with regard to the specific Fridays that the Petitioner actually worked. The Petitioner testified that the employer stated their records do not go back that far. The Petitioner stated that she had some pay statements. The record was held open after the second hearing for the Petitioner to submit her pay statements for the overpayment period to demonstrate the days and hours she worked. Nothing was submitted by the Petitioner after the second hearing.

Based on the evidence submitted, I conclude the agency correctly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$496.43 for the period of September 13, 2015 – April 30, 2016. The agency concedes that it erred in authorizing 40 hours/week. Though it was an agency error, the law requires that the agency recover benefits that were incorrectly issued. The agency demonstrated that it should have authorized 32 hours/week based on the overlap of the Petitioner's work schedule and the Petitioner's daughter's school schedule. While I find the Petitioner's testimony credible that she was required to work some Fridays when her daughter was at school, there is no specific evidence presented to demonstrate which Fridays were work days for which child care was needed. Without that evidence, it is not possible to determine the child care that should have been authorized. I find it difficult to believe that [REDACTED], the Petitioner's employer, does not have information regarding her pay and work schedule for the overpayment period. If the Petitioner is able to get that information and submit it with a rehearing request in accordance with the instructions below within 21 days of the date of this decision, I can reconsider the amount of the overpayment. Without more specific evidence, I find the agency is correct in its determination of an overpayment.

**CONCLUSIONS OF LAW**

The agency correctly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$496.43 for the period of September 13, 2015 – April 30, 2016. The agency concedes that it erred in authorizing 40 hours/week.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal 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.

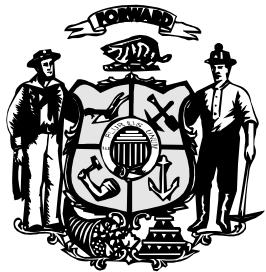
**APPEAL TO COURT**

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 Milwaukee,  
Wisconsin, this 7th day of March, 2017

\s \_\_\_\_\_  
Debra Bursinger  
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 March 7, 2017.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud