



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

My Little Love One's, Inc.

ML-09-0416

Pursuant to petition filed November 5, 2009, under Chapter DCF 201, Wisconsin Administrative Code, to review a decision by the Department of Children and Families, a hearing was held on March 2, 2010, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overpaid \$18,150.15 in child care services which are subject to recovery.

There appeared at that time and place, the following persons:

PARTIES IN INTEREST:

Petitioner:

My Little Love One's, Inc., by

Betty J. Ross
My Little Love One's, Inc.
3735 North 35th Street
Milwaukee, WI 53216

Also present: Vieta Caldwell, petitioner's daughter

Respondent:

Department of Children and Families, by

Kevin Ivory, Child Care Program Specialist
Milwaukee County Department of Health Services
1220 W. Vliet Street, 2nd floor
Milwaukee, WI 53205

Administrative Law Judge:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and resides at 2614 N. 46th Street. She is authorized to operate a child care center called My Little Love One's, Inc.
2. Petitioner's daughter is Vieta Caldwell. Ms. Caldwell had a child care authorization in effect for her four children to attend My Little Love One's, Inc. from May to October 2009.

3. On May 4, 2009 Ms. Caldwell applied for FoodShare and Medical Assistance with the Milwaukee County Department of Health Services (also called “the agency”). She reported to the agency that she and her children had moved back home with her mother. Exhibits 1 and 14.
4. On May 12, 2009 Ms. Caldwell provided a letter to the agency to verify her address and rent. The letter is authored by her mother and states in relevant part that “Vieta Caldwell, as of April 30, 2009, resides at 2614 N. 46th St with her children, paying the amount of 400.00 a month...”. See Exhibits 2 and 3.
5. On October 21, 2009 the child care program integrity unit for the agency reviewed Ms. Caldwell’s case. Upon discovering that she and her children were living with her mother, Ms. Caldwell’s child care authorization was ended effective October 17, 2009. Exhibit 6.
6. On October 27, 2009 the agency issued a notice to petitioner stating that petitioner had an overpayment of \$18,150.15 in child care funds for the period of May 17, 2009 through October 17, 2009 as she had received child care funds for children that resided with her. See Exhibits 10 and 11.
7. On October 30, 2009 the agency processed Ms. Caldwell’s six month review form (SMRF). In the form petitioner reported that she moved to another residence at 3442 N. 37th St. Exhibit 6.

DISCUSSION

The agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. Wis. Stat. §49.195(3) provides that the agency shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. §49.195(3), Wis. Admin. Code §DCF 201.01, et al.

Wis. Stat. §49.155 authorizes the agency to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. 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. Wis. Stat. §49.155(1m). As such, W-2 child care assistance is a type of Wisconsin Works benefits. The agency has a Child Care Policy Manual (Manual) that provides the specific activities, policies and eligibility requirements for child care recipients and providers to qualify for the program. It can be found online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. Previous versions can also be found there.

The statute also provides the following:

- (d) No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child, unless the county determines that the care is necessary because of a special health condition of the child.

Wis. Stat. §49.155(3m)(d).

The Manual provides the following directives:

Authorizing When the Parent or Other Legally Responsible Adult is a Child Care Provider

State statute prohibits authorizations to a child care provider for the care of their own child or a child with whom they reside.

Manual, §3.6.27 (version effective 11/01/2008-10/14/2009; unchanged in relevant part for the current Manual).

2.3.2 Provider Overpayments

Agencies shall take all reasonable steps necessary to recoup or recover, from the provider, any overpayments made for child care services.

Recover an overpayment from a provider when they have received payment for care they did not provide or when operating outside of regulation:

1. The provider recorded incorrect hours of attendance which caused an overpayment. This applies to both enrollment and attendance based authorizations.
2. Generally when the worker entered incorrect authorization or provider information or failed to act on reported information resulting in an authorization related overpayment.
3. The provider did not report to the local agency when a child stopped attending day care.
4. The provider was not properly regulated during the hours for which attendance was paid (e.g. license was suspended, had more children in care than the regulation allowed, care occurred at a location other than the authorized location, etc.).

2.3.5 Recovery from Providers

All overpayments made to providers must be collected, whether due to error or fraud.

In this case, the agency sought to recover payments for daycare services rendered during the periods in question because it determined that petitioner had been billing and receiving child care funds for her grandchildren who resided with her. The petitioner testified that she did not know about this policy. As noted above, an overpayment can occur even if mere error occurred (e.g., she did not know about the policy), and the agency never argued that she had done anything intentionally. She and her daughter then testified that the daughter had moved out “some time in April” and provided rent receipts from May 1, 2009 through September 1, 2009 to show that she had paid rent at 1590 W. Hopkins in Milwaukee, which was the residence of her children’s uncle. Exhibit 15. The weight of the credible evidence, however, leads me to find that these receipts were made after the fact and that petitioner still had her daughter living with her during those periods. First, the daughter never reported to the agency that she moved from her mother’s home. Rather, she supplied proof of the fact that she was living with her mother to the agency. She applied for FS on May 4, 2009. Exhibit 1. She acknowledged that when she applied on May 4, 2009 that she was giving the agency correct information. See Exhibit 14. How she would have a rent receipt from another address as of May 1, 2009 and not provide that to the agency raises obvious questions. On May 12, 2009 the daughter was still providing verification of her residence with her mother to the agency. Exhibit 2. On May 12, 2009 Ms. Caldwell provided a letter to the agency to verify her address and rent. The letter is authored by her mother and states in relevant part that “Vieta Caldwell, as of April 30, 2009, resides at 2614 N. 46th St with her children, paying the amount of 400.00 a month...”. See Exhibits 2 and 3. This letter authored by petitioner herself does not coincide with her testimony that the daughter had moved out “some time in April”. Finally, if petitioner had moved from her mother’s, her SMRF (if not more documentation from the agency) would have still gone to the address of record with the agency during the period in question. This should have triggered the daughter to report to the agency that she moved. Yet, no report of her move was made to the agency until the SMRF was processed on October 30, 2009. In the form petitioner reported that she moved to another

residence at 3442 N. 37th St. Exhibit 6. This all notably occurred during the time the authorization was ended and after the agency had issued its notice of overpayment to the petitioner. Exhibits 6 and 11.

As a certified day care provider receiving public assistance child care payments, petitioner must be cognizant of child care program requirements. She has a duty to do so. Even if she had overlooked the provision that states that such living arrangements would not be reimbursable, the agency must seek recovery of the incorrectly paid funds. Therefore, I must conclude that the county agency correctly determined that petitioner was overissued \$18,150.15, which is subject to recovery.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner was overpaid \$18,150.15 in child care services which are subject to recovery.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2010.

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals