



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

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In The Matter Of

It's All About Love Childcare

DECISION

ML-09-0349

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 7, 2009, under Wis. Adm. Code, §DCF 201.07(1)(e), to review a decision by the Dane County Dept. of Human Services to recover child care assistance paid to a child care provider, a hearing was held on December 8, 2009, at Madison, Wisconsin.

The issue for determination is whether petitioner was overpaid due to inadequate attendance records.

**PARTIES IN INTEREST:**

Petitioner:

Lacquita Davis  
It's All About Love Childcare  
228 N. Musket Ridge Drive  
Sun Prairie, WI 53590

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

By: Lori Anderson, Overpayment Specialist  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**EXAMINER:**

Brian C. Schneider, Attorney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner Lacquita Davis is the operator of a child care center in Sun Prairie.
2. In late 2008 the county agency requested copies of petitioner's attendance records, which petitioner provided for dates through the end of December, 2008.
3. In February, 2009, a state licensing specialist also requested copies of petitioner's attendance records, which petitioner provided through February, 2009.
4. All records were given to the county agency. When reviewing the records, the county specialist found the following: petitioner had no record for the week beginning November 23, 2008; petitioner

had two different records for the week beginning November 30, 2008; for the two weeks beginning December 14 and December 21, 2008, the records provided to the county agency in December differed from the records provided to the state in February, 2009.

5. The county determined that all Wisconsin Shares payments paid to petitioner in those four weeks were overpaid because petitioner's attendance records were unreliable. By a notice dated September 30, 2009, the county informed petitioner that she was overpaid \$4,522.95 in child care payments during the four weeks in question.
6. For the week of November 23, 2008, petitioner accidentally printed out an attendance sheet with the dates "November 30-December 6, 2008" printed on it. There were not two different attendance records for the week beginning November 30, 2008; one of the two records actually was for the week of November 23, 2008.
7. For the weeks of December 14 and December 21, 2008, petitioner recopied the records before giving them to the county because she thought the originals were messy and confusing. Then she gave the originals to the state licensing agent in February. It thus appeared that petitioner had two different attendance records for those weeks; in fact with one exception the records showed the same attendance but in different form.
8. The exception was that, for two children, petitioner wrote a pick up time of 7:15 on the county sheet when the original sheet said 7:30. See Exhibits C3 and C4. The children at petitioner's facility were on an enrollment basis. The discrepancy in the pick up time would not make a difference on petitioner's payment amount.

### DISCUSSION

Appeals of actions against child care providers are allowed pursuant to the Wisconsin Administrative Code, §DCF 201.07. §DCF 201.07(1)(e) provides that a child care provider can appeal, among other actions, collection of overpayments including that determination of the amount of the overpayments.

Wis. Adm. Code, §DCF 201.04(5)(b) provides as follows:

(b) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible or overpayments caused by administrative error that benefited the provider. A provider shall be responsible for an overpayment if both of the following criteria are satisfied:

1. The overpayment benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements.
2. The overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

The Child Day Care Manual, Chapter 2, §2.3.2, tells the agency to recover from a provider when:

1. The provider recorded incorrect hours on the attendance form 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.).

An example given is when the provider accidentally reports more hours than a child attended.

The county found that petitioner was overpaid under the first criterion listed above – that petitioner recorded incorrect hours on attendance forms. More specifically, the county alleges that petitioner’s attendance reports were either missing or inconsistent. The issue, however, is whether petitioner received more assistance than otherwise would have been paid on the families’ behalves under program requirements, as required in the administrative code provision. The county takes the position that the provider is expected to keep accurate attendance records, and without accurate attendance records the provider is not eligible to receive subsidy funds.

It is obvious that the errors discovered by the county were of the typographical type, not due to some intent to misrepresent attendance or some sort of rampant recordkeeping negligence. The “missing” record for the week of November 23, 2008 actually was one of the two records labeled “November 30-December 6, 2008.” A review of Exhibit B1, the erroneous record, makes it obvious that the attendance listed was actually for the week before. The facility was closed that Thursday, listed as December 4 on the sheet, but Thursday, November 26, 2008 was Thanksgiving. Furthermore, Exhibit B1 was filed with the county on December 3, 2008, before the week it purported to show was over.

The result, therefore, was that petitioner actually had just one attendance record for the week of November 30, and actually had a record for the week of November 23, but mislabeled because petitioner printed out a record with the wrong dates on it.

With regard to the weeks of December 14 and 21, petitioner testified credibly that she recopied the originals because they were messy and confusing, especially regarding children who attended the facility both before and after school. A review of the records with petitioner’s explanation shows that the two different copies provided to the county and the state actually were consistent except for the pick up times on one day for two children where petitioner recopied the wrong times. The error did not result in higher payments to petitioner. The children were there on an enrollment basis, meaning that petitioner received the same payment for them regardless of the number of hours attended.

I reviewed Chapters DCF 201 concerning administration of child care funds, DCF 202 concerning child care provider certification, and DCF 250 regarding family day care centers, and there is nothing in the chapters requiring a provider to keep precise records of children’s attendance. It is vital that providers keep accurate attendance records, but anyone can make mistakes. The key is whether the provider was overpaid due to those mistakes. In this case petitioner made some mistakes in her record keeping, but the mistakes were explained adequately and I can find no basis for concluding that she was not entitled to the payments in question.

### **CONCLUSIONS OF LAW**

Petitioner was not overpaid child care funds for the dates in question; discrepancies on her attendance records were mere mistakes and did not lead to petitioner being paid more than she was entitled to receive.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind the overpayment claims at issue in this case and to reimburse petitioner any funds withheld to collect the rescinded overpayments.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wisconsin Statutes § 227.49. A copy of the statutes can be found 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 no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_30th\_\_ day  
of \_December\_, 2009.

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Brian C. Schneider, Attorney  
Division of Hearings and Appeals  
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