

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County LAKE	District Hearings Section CLEVELAND	Assistance Group Name		Assistance Group Number
Place of Hearing LAKE CDHS	Initial Hearing Date 11/23/2004	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Leslie Ryan - Child Care Supervisor Kristen Rousch - Investigator

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS 11/04/2004	Date Appeal Summary Received 11/22/2004	Date Scheduling Notice Mailed 11/12/2004
--------------------	-------------------------------	--	---	--

Appeal Number(s)/Program(s) 1200012/UNK

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE

On 10-13-04, the Lake County Department of Job and Family Services (Agency) requested the Appellant repay a \$4,377.80 Publicly Funded Child Care overpayment for the period August 2003 through February 2004. The Appellant had reported the father of her child was not in the home. The Agency determined that the father of the appellant's child resided with the appellant and was available to provide child care during the time that she had received the Child Care benefits. Based on the weight of the evidence, it was established that two parents were in the home and the child's father was appropriately considered to be available to provide the child care.

It is found that the Agency's determination of a child care overpayment is correct. However, the amount of child care overpayment is not found to be correct because the Appellant reported that the father of the child was also employed. Eligibility may have existed for certain days and with a higher child care fee, if both were employed. Therefore, the appeal is **OVERRULED**, with Compliance to provide the appellant an opportunity

DKP

Appeal(s) OVERRULED 1200012	Date Issued 01/04/2005	Compliance
------------------------------------	----------------------------------	------------

Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

Appeal Number(s) 1200012

to verify dates of employment and earned income of the father of the child

PROCEDURAL MATTERS

The Appellant's hearing request was received on 10-28-04. The hearing was scheduled for 11-23-04 per scheduling notice sent to the Appellant on 11-12-04. The Agency prepared an appeal summary, and it was received on 11-22-04.

FINDINGS OF FACT

- 1) The Appellant's public assistance case transferred to the Agency in March 2003.
- 2) The Appellant reported that the father of her child was not residing with her and listed an address in Cleveland as his address.
- 3) The Appellant was approved for Publicly Funded Child Care benefits effective 08-01-03 as a single parent household.
- 4) The father of the Appellant's child owns the mobile home in which the appellant resides.
- 5) The Agency sent a postal inquiry to the Cleveland Postmaster on November 18, 2003. It was returned showing that the father of the child was not known at the Cleveland address.
- 6) The Agency sent a postal inquiry to the Perry Postmaster on January 14, 2004. It was returned showing that mail is delivered to the father of the Appellant's child at the Appellant's address.
- 7) The Agency completed a license and auto registration search. The father of the Appellant's child has a license which lists his address to be the same as the Appellant's address, and the validation date was 11-24-03.
- 8) The father of the appellant's child has three separate vehicles which were purchased between March 2003 and May 2003. The registration for each vehicle shows the address of the father of the Appellant's child to be the same as the Appellant's address.
- 9) The Agency determined that the father of the Appellant's child resides with the Appellant, and sent a letter to the Appellant on 02-09-04 to request employment verification for him. The letter requested verification by 02-19-04. There was no response from the Appellant to this letter and no employment verification submitted.

Appeal Number(s) 1200012

10) The Appellant contacted the Child Support Enforcement Agency on 02-19-04 to report that the father of the child resides in her home.

11) The Agency proposed termination of the child care benefits due to income of the father of the child exceeding the child care eligibility standard.

CONCLUSION OF POLICY

Policy

Unmarried parents and a common child comprise a child care household per **Ohio Administrative Code § 5101:2-16-30(A)(5)**. "The composition of the family for determining eligibility for child care benefits shall be one of the following: . . .

(5) Unmarried parents, a common child, and other children of either parent who all reside in the same household."

The gross income from all family members is considered in determining eligibility per **Ohio Administrative Code § 5101:2-16-34(B)**. "'Gross earned income' means the total amount of gross earnings received in a month by all of the employed individuals in the family . . ."

Child Care services cannot be authorized for an eligible family when there is a caretaker in the home who can provide appropriate care for the child or children per **Ohio Administrative Code § 5101:2-16-35(Q)**.

"The eligibility determiner shall not authorize child care services for an eligible family when a caretaker is available in the home and can provide appropriate care of the child, except when the family provides written verification to the eligibility determiner from a licensed physician, licensed psychologist that the caretaker cannot provide appropriate care of the child. This exception shall only apply to a family with more than one caretaker."

Child care benefits that are paid when the recipient is not eligible to receive them are considered overpayments, and the recipient is responsible for repayment per **Ohio Administrative Code § 5101:2-16-73(A)**. "Child care overpayment is defined as follows:

(1) Child care benefits which the recipient received but for which the recipient was not eligible; and for which the CDJFS has reimbursed the child care provider. . . . The recipient is responsible for repayment of the overpayment to the CDJFS."

Child care overpayments may be caused by recipient error of intentionally withholding or falsifying information, benefits issued pending a hearing decision, day care provider error, or agency error per **Ohio Administrative Code § 5101:2-16-73(B)**. "Child care overpayments may occur as a result of the

Appeal Number(s) 1200012

following: (1) Recipient error or the intentional withholding or falsification of information or misuse of child care services by the recipient;"

It is up to the Appellant to provide the required verifications needed to determine eligibility, and the Agency must advise the Appellant of requested information which is in regards to the months in which fraud is suspected may be used in civil action or criminal prosecution per **Ohio Administrative Code § 5101:2-16-71(F)**. "The recipient is responsible for providing information necessary to determine eligibility in order for child care benefits to continue. The recipient shall be advised that any information requested by the CDJFS that is relevant to the benefit period in which fraud is suspected can be used in a civil action or criminal prosecution."

It is up to the Agency to show, by a preponderance of the evidence that its actions are correct per **Ohio Administrative Code § 5101:6-7-01(C)(1)(c)**. "It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules.

Analysis

The Appellant moved to Lake County from Cuyahoga County in March 2003. She reported she was a single parent household, and that the absent parent's address was in Cleveland. The absent parent owns the mobile home in which she resides, and he completed four landlord verification forms between March 2003 and September 2003 which the Appellant submitted to the Agency. The Agency found the Appellant's reported living arrangement to be questionable, and further investigated the situation. The Agency determined that the father of the Appellant's child actually resided with the Appellant, and not in Cleveland as reported by the Appellant. As a result, the Agency determined that he was available to provide care for the children. The child care benefits provided to the Appellant from August 2003 through February 2004, which amounted to \$4,377.80, is considered an overpayment.

The Appellant stated during the hearing that while the absent parent did stay with her on occasion and no more than one or two nights a week, his address was not the same as hers. He would also stay with his aunt, or his sister, or with other people. His clothes were not kept at her address and she usually had no idea where he was. She acknowledged that his mail was received at her address and was not aware that this would be a problem. She added that she tried to contact the Agency for about three months to report that the absent parent was going to be moving back in with her, but could not get through to her case worker.

The evidence presented by the Agency - post office verification forms from November 2003 and January 2004, utility bill from July 2003, letter from utility company dated 08-26-03, motor vehicle registrations from March 2003 through May 2003, and driver's license information with a validation date of November 24, 2003 show that the father of the Appellant's child had the same address as the Appellant.

Appeal Number(s) 1200012

The evidence provided by the Appellant to show that his address was separate from the Appellant's address were the four landlord forms, which were all filled out by the father of the Appellant's child. He listed a different telephone number with each form which was someone else's telephone number. Preponderance of the evidence is defined in Black's Law Dictionary, seventh edition, as the greater weight of evidence, superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. The evidence submitted by the Appellant is not convincing, since the forms were all completed by the father of her child. The Appellant's explanation was found not credible. Appellant testified that the father of the child would stay with relatives or friends. The evidence submitted by the Agency shows clearly that the father of the child considered the Appellant's address as his address for receipt of mail, registration of his motor vehicles, and for his driver's license. The preponderance of the evidence shows that the Appellant and the father of her child did reside at the same address.

Since the Appellant and the father of her child resided at the same address, one of them would be available to take care of the child, unless both were at work or school or training for a job. Although the Appellant reported that the father of her child was always employed, there was no employment verifications obtained for August 2003 through February 2004. If he was employed, his income would have had to be verified and considered in determining child care eligibility, and there would be an overpayment based on the amount of his income. If he was not employed, there is a child care overpayment as determined by the Agency because he was available to take care of the child.

Therefore, the Agency correctly determined that an overpayment exists from July 2003 through February 2004 and the appeal is **OVERRULED**. The amount of the overpayment however, is not determined to be correct as it appears the father was employed during this period and may not have been available to provide care; his earned income would have to be considered in determining whether there was eligibility for child care and/or a copayment. The Appellant should be allowed the opportunity to verify when the father of the child was employed between July 2003 and February 2004, and the amount of employment income he received.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me, I find the appeal should be **OVERRULED**. An overpayment exists from July 2003 through February 2004; however, the amount may be incorrectly calculated.

The Agency is directed to allow the Appellant a reasonable opportunity to provide verification of any dates that the father of the child was employed, and the income received during his employment. The Agency shall send a notice to the Appellant informing her of the nature of and a due date for the verification. If Appellant provides the requested verification, the Agency shall redetermine the Appellant's child care overpayment

Appeal Number(s) 1200012

considering both employment (availability to provide child care) and income. A failure to cooperate with the Agency in this matter shall result in assessment of a \$4,377.80 Publicly Funded Child Care overpayment for the period August 2003 through February 2004, which will require repayment.

Written notice of the Agency's determination in this matter and appeal rights shall be provided to the Appellant.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be support by the evidence, the recommendations above are adopted.

Appeal #**1200012** is **OVERRULED**.

Agency is required to comply with the Hearing Officer's recommendations. Ohio Admin. Code ' 5101:6-7-03(B)(1)(a) requires compliance with this decision within 15 calendar days from the date of this decision, but no later than 90 calendar days from the request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, with supporting documentation. (2003)

LIST OF EXHIBITS

AGENCY

- A) The 11-18-04 Postmaster address verification for absent parent's reported address.
- B) The 01-14-04 Postmaster address verification for absent parent's reported address.
- C) Driver's License Information, Vehicle Registration Information
- D) Landlord verification form signed on 03-11-03
- E) Landlord verification form signed on 04-25-03
- F) Case information computer printout
- G) Landlord verification form signed on 07-28-03
- H) Landlord verification form signed on 09-04-03
- I) Utility bill for water, dated 07-19-03
- J) Rights and Responsibilities page of application, signed by Appellant on 07-26-03
- K) Absent Parent information page of July 2003 application
- L) Letter from city utility to father of Appellant's child, dated 08-26-03
- M) Absent Parent information page of application dated 09-03-03
- N) Statement signed by father of Appellant's child indicating that Appellant is responsible for electric bill
- O) Statement dated 02-06-04 indicating that father of Appellant's child resides with the Appellant
- P) Letter from Agency to Appellant, dated 02-09-04, requesting income verifications for father of her child
- Q) Notice of termination of Child Care, sent to appellant on 02-27-04

Appeal Number(s) 1200012

- R) Verification of employment for father Appellant's child, dated 03-05-04
- S) Notice of child care overpayment, sent to Appellant on 10-13-04
- T) Child support case narrative dated 02-19-04

APPELLANT

None

Date Issued: 01/04/2005