



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

CCB/166574

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on July 01, 2015, at Milwaukee, Wisconsin. A decision was issued by the Division of Hearings and Appeals that sustained a discontinuance of Petitioner's child care benefits. Petitioner requested a rehearing. That request was granted and a new hearing conducted on March 29, 2016.

The issue for determination remains the same: whether Petitioner's child care was correctly discontinued because of income in excess of applicable income limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is the court appointed guardian for a nephew, [REDACTED]. She was receiving Kinship Care and child care benefits for the child.
3. Petitioner was notified that her child care benefits were ending on June 1, 2015. Though initially this was for failing to complete a six month report form, it turned out that Petitioner was not

eligible for child care because Kinship Care for [REDACTED] ended and countable income was in excess of income limits.

4. Petitioner's Kinship Care for [REDACTED] ended because [REDACTED] began to receive Social Security SSI benefits.
5. Petitioner's household income consists of gross earned income of about \$3131 and the SSI of \$256.00.
6. Petitioner's household size is 2.
7. 200% of the Federal Poverty level for a group of 2 is \$2655.00 and 185% is \$2456.00. See Operations Memo # 15-08, effective February 1, 2015.

DISCUSSION

As the events here occurred in 2015 the Wisconsin Shares Child Care Assistance Manual cites here are the Manual in effect at that time, the Rev 12/10/13 version that is found at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1pre0915.pdf2013.

The crux of the problem here is how financial eligibility is determined for a relative placement under the circumstances described in the Findings. While the gross income limit is 200% of the Federal Poverty Level for a parent, the rules are different for a relative if certain circumstances are present. Petitioner had been considered a court-ordered placement receiving Kinship Care and was receiving child care under the following policy:

1.13.3 Court Ordered Kinship Care Child Care Assistance Cases:

Financial eligibility for kinship care relatives who receive 1) kinship care benefits for the child, or have been placed on a waiting list for kinship care benefits, and 2) have a court order for care of the child are processed as Court Ordered Kinship Care cases in CARES Worker Web, and the income of the child's natural or biological family is used to determine financial eligibility.

Wisconsin Shares Child Care Assistance Manual (Manual), §1.13.3; also see §1.6.2.1.

Petitioner's child care ended when her nephew became eligible for Social Security benefits. A child who receives SSI is not eligible to receive Kinship Care. *Wis. Admin. Code, §DCF 58.07(2)*. With the end of Kinship Care, Petitioner became a non-court ordered Kinship Care case:

1.14.0 Non-Court Ordered Kinship Care Cases

All kinship care relatives who are caring for a relative child in place of a parent who do not both receive a kinship care benefit for the child and a have court order for the care of the child are considered **non-court ordered for child care assistance in the CARES Worker Web System.**

...

Manual, §1.14.0, emphasis in original text.

Petitioner is the court appointed guardian for her nephew, however, for that to affect how income is counted for the Wisconsin Share Child Care program the guardianship has to be a subsidized guardianship. The hearing record does not indicate that the guardianship here is a subsidized guardianship. I did contact the Department of Children and Families to see if it could locate records indicating a subsidized guardianship for [REDACTED]. The Department does keep records for all subsidized guardianships and does not have a record of a subsidized guardianship for Petitioner or [REDACTED]. Without that Petitioner is considered a non-court ordered case. This means that Petitioner's, not the biological parents, income is counted. As noted in the first Decision of this case financial eligibility for a non-court ordered Kinship Care case is determined as follows:

1.14.1 Financial Eligibility

Financial eligibility for non-court ordered kinship care relatives is based upon the kinship care relative's gross income being not more than 185% federal poverty level (FPL) at the time of application, and no more than 200% FPL for two consecutive months for on-going cases.

Manual, §1.14.1.

The 185% and 200% of Federal Poverty level amounts are noted at Finding #7. Petitioner's income is in excess of those amounts. I have to conclude that the agency correctly discontinued Petitioner's child care.

Though this outcome does not seem fair to Petitioner, the Division of Hearings and Appeals does not have authority to create alternative eligibility criteria, that is the purview of the legislature and Department of Children and Families; the Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Finally, 2 additional items - first, while the Division of Hearings and Appeals does not often grant second rehearing requests, subsidized guardianships are complicated and if Petitioner has subsidized guardianship proof that has been missed in DCF records she could again request a rehearing as noted below. Second, the DCF has issued new child care program manuals since the events here but I do not find any changes in the policy described above.

CONCLUSIONS OF LAW

That Petitioner's child care was correctly discontinued as she became a non-court ordered kinship care relative when her nephew began receiving SSI payments and her income exceeded the applicable income limits.

THEREFORE, it is

ORDERED

That this 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, Madison, Wisconsin 53703, **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 31st day of May, 2016

\sDavid D. Fleming
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 May 31, 2016.

Milwaukee Enrollment Services
Child Care Benefits