



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/169547

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly denied petitioner's request for an exclusion to the 24-month exhaustion of CC eligibility for post-secondary education.

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: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to July 24, 2010, the petitioner had an ongoing CC case. She was attending [REDACTED] ([REDACTED]) and [REDACTED] for post-secondary education.

3. Petitioner enrolled in the FoodShare Employment and Training (FSET) program on January 9, 2013. Petitioner was notified on June 16, 2015, that she had 3.4 months remaining on her 24-month post-secondary education CC authorization.
4. The petitioner received 24 months of CC while attending a postsecondary institution.

DISCUSSION

I. JURISDICTION.

All child care 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). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0, online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

II. GENERALLY, CC CANNOT BE AUTHORIZED FOR A PERSON WHO IS NEITHER IN PAID EMPLOYMENT OR AN APPROVED ACTIVITY. POST-SECONDARY EDUCATION IS NOT AN APPROVED ACTIVITY AFTER 24 MONTHS.

The statute authorizes childcare in a situation where it is a necessity for a parent to have childcare in order to go to her job or perform an “approved activity.” *Manual*, §1.4.8. Department policy contains a specific list of “approved activities” that justify the need for CC benefits. The lists identifies these activities as: high school attendance, unsubsidized employment, pre-job training not exceeding two weeks’ duration, contractual apprenticeship, sheltered employment, some self-employment, W-2 jobs, FSET participation, some ESL/literacy education, and some technical college programs if the participant is employed at least five hours per week during the semester. *Manual*, §1.5.0-1.5.7.

There is minimal federal law that sets the terms of the CC program. The relevant state statute says that the Department may find a parent eligible for CC if she is participating in a course of study at a technical college “as determined by the department.” Wis. Stat. §49.155(1m)(a)5. The statutory language on postsecondary attendance also contains an explicit limitation on CC payment to two years for this purpose:

(1m) ELIGIBILITY. ... Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ... if the individual meets all of the following conditions:

(a) The individual is a parent of a child ... who is under the age of 13 ...and child care services for that child are needed in order for the individual to do any of the following:

...

5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. ***An individual may receive aid under this subdivision for up to 2 years.*** *(emphasis added)*

Wis. Stat. §49.155(1m)(a). See in accord, *Manual*, §1.5.7. Because there is no dispute that the petitioner has attended a postsecondary institution for at 24 months, the household was not entitled to a CC authorization after those 24 months expired.

The petitioner does not contest that she was in a postsecondary program for at least 24 months, but argues that she was never informed of the 24 month limit, and contends that she should now be somehow grandfathered in. I accept the petitioner's assertion that she was under-informed about the existence of the 24-month school clock. ***I strongly encourage the Department to review its practices to assure that postsecondary recipients are given written notice of the existence of the 24-month clock at some point well ahead of month #20.*** That said, the Department's failure to give advance warning of the existence of a 24-month clock is not a basis for voiding the discontinuance of the petitioner's CC authorization.

With respect to the timely notice requirements for the ending of an authorization, the *Manual* contains this instruction:

3.8.10 Parent No Longer in an Approved Activity

If reported within 10 days, manually end the authorization by counting ahead 10 calendar days, beginning with the current date and ending on the Saturday following the tenth day. CSAW will send the notice to the family and provider the Monday following the date that the authorization was changed. If the change was not reported timely, manually end the authorization the following Saturday.

Manual, §3.8.10.

The petitioner provided nothing to establish that the petitioner failed to provide proper notice of the exhaustion of the 24 month period. Thus, I have no relief to offer the petitioner here.

CONCLUSIONS OF LAW

The petitioner was non-financially ineligible for an authorization for CC hours while she was attending school due to expiration of her 24-month school attendance "clock."

THEREFORE, it is

ORDERED

That the petition 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.

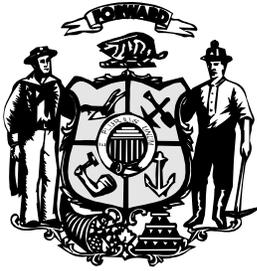
APPEAL TO COURT

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 Madison,
Wisconsin, this 14th day of March, 2016

\sPeter McCombs
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 14, 2016.

Milwaukee Early Care Administration - MECA
Child Care Benefits