



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

CCB/170261

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on February 16, 2016, at Madison, Wisconsin. A hearing set for January 12, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the agency is correctly determining the amount of the petitioner's current CC benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: [Redacted] ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. The petitioner has an ongoing CC case for his three year old daughter. He is not married to the child's mother. A misunderstanding with the county agency began when the child's mother, [REDACTED] [REDACTED] began telephoning the agency to report that she had the child full time, and that the petitioner should not have CC benefits. The agency closed his CC case on November 9, 2015, while the child's placement was investigated. After confirming, on November 16, the child's placement, the agency re-opened the CC case effective November 18, 2015.
3. Per court order, the petitioner has 50/50 placement of his child, with a two week on/two week off schedule.
4. In calculating the amount of the petitioner's CC subsidy, the county agency budgeted undisputed Social Security income of \$1,145 monthly, and self-employment income of \$483.00, for a total of \$1,628. The self-employment income was based on the petitioner's 2014 federal income tax return.
5. In calculating the amount of the petitioner's CC subsidy, the agency did not subtract the petitioner's utility, mortgage, and property tax expenses. Those costs are relevant to the FoodShare program.
6. On November 30, 2015, the agency mailed a notice, titled *Child Care Authorization Information*, to the petitioner. It advised that he would continue to receive a CC subsidy for this child for 15 hours of care weekly (on his weeks). The petitioner spends more than 15 hours per week on his self-employment enterprise.

DISCUSSION

I. THRESHOLD PROGRAM ELIGIBILITY.

Wis. Stat § 49.155 authorizes the department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also, *W-2 Manual*, 15.2.0. The department has a *Wisconsin Shares Child Care Subsidy Policy Manual* that provides the specific policies for the program.

To qualify for Childcare Assistance (CC), a parent must have a low income. Wis. Stat. §49.155(1)(c), & (1m). Specifically, new applicants cannot have income exceeding 185% of the Federal Poverty Level (FPL) and ongoing recipients cannot have income exceeding 200% FPL. *Child Care Subsidy Policy Manual (Manual)*, Ch. 1, §1.5.1. The available gross income of all household members is considered unless specifically excluded by the Child Care assistance program rules or policy. *Id.*, § 1.5.1.

The agency correctly determined the petitioner's self-employment income by looking at his prior year's income tax return. *Id.*, 1.6.2.2; Wis. Stat. §49.155(1m)(c)1. The *Manual* goes on to list types of income that are excluded, such as child support received for a child in the household, at §§1.5.1 – 1.5.5. These provisions may be viewed online at <http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm> See also, Wis. Admin. Code DCF ch. 201 (March 2009), and § DCF 101.26. The pertinent statute, Wis. Stat. §49.155(1m), cross-references to §49.145(3)(b), which excludes only the federal Earned Income Tax Credit, student financial aid, W-2 checks, and the minor child's earned income, from available income. There is no deduction from income for utilities, mortgage payments, or property taxes.

Currently, 200% of the Federal Poverty Level for two persons is \$2,655. Because the petitioner's household's gross monthly income was below this amount, the agency found that he continued to be eligible for the program. Although the petitioner's utility, mortgage, property tax expenses cannot be subtracted from income in the CC hourly subsidy amount calculation, the agency agreed to review those expenses after the hearing to affect his FoodShare case. The amount of his FoodShare benefit is beyond the scope of this hearing request, so FoodShare will not be discussed further here.

II. AUTHORIZATION APPROVAL.

The petitioner remains concerned about the number of hours of care that have been authorized for his child on a weekly basis. In arriving at its 15 hours per week authorization, the agency relied upon the following policy manual directive:

2.2 Wisconsin Shares Authorizations

Child care authorizations are written approval for child care provider reimbursement. Authorizations must always begin on a Sunday and must always end on a Saturday.

2.2.8.1 Ongoing Self-Employment

After the first six (6) months of a new business being in operation, child care authorizations for self-employment are limited to the number of hours that support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage.

2.2.8.2 Calculating Ongoing Self-Employment Authorizations

The monthly adjusted self-employment income divided by the Wisconsin minimum wage equals the monthly maximum of child care hours. To calculate a weekly amount of child care hours allowed, divide the monthly amount by 4.3. All travel time is already included in the hours allowed under this formula. Do not add additional hours for travel time.

Example 1: (Single Parent) After her first six (6) months in business, Tiffany's cake business has a monthly adjusted income of \$400.00. Divide 400 by \$7.25 to get 55.17 hours for the month. Then divide 55.17 by 4.3 weeks to get 12.83 hours per week; round this amount up to 13 hours per week. Do not add additional hours for travel.

Manual, §§ 2.2 – 2.2.8.2.

The above policy direction is the justification for number of authorized CC hours for the petitioner. The petitioner testified that he spends more than 15 hours per week on his self-employment enterprise; this may be true. The controlling statute and code are silent on this topic. On a common sense level, authorization for CC for work that does not meet minimum wage is justified. If the business has not made money at the minimum wage level for six months (and in this case, at least a year), an inducement should exist to get the petitioner to find more remunerative employment, until such time as the self-employment business is generating enough work to match the minimum wage. Thus, I will uphold the decision as to the number of hours in the CC authorization here.

CONCLUSIONS OF LAW

1. The county agency correctly calculated the petitioner's gross income for CC purposes. Utilities, mortgage payments, and property taxes are not subtracted from income in the CC benefit calculation.

2. The county agency correctly determined the number of authorized CC hours for the petitioner in November 2015, due to the failure of his self-employment business to generate income at the level needed to sustain more than fifteen weekly hours of activity at minimum wage.

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 22nd day of February, 2016

\sNancy J. Gagnon
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 February 22, 2016.

Dane County Department of Human Services
Child Care Benefits