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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: AAP - 171431

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 15, 2016, under Wis. Admin. Code §DCF 50.065, to review a decision by the Department of Children and Families regarding Adoption Assistance Program, a hearing was held on August 8, 2016, by telephone.

The issue for determination is whether Department of Children and Families (Department or DCF) correctly denied a request to amend an adoption subsidy agreement so as to increase the amount of the subsidy.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

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

By: [REDACTED]  
Office of Legal Counsel  
P.O. Box 8916  
Madison, WI 53708-8916

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Fond Du Lac County.

2. Petitioner and her husband adopted [REDACTED] on August 28, 2012. An adoption assistance agreement was signed prior to the adoption, on July 30, 2012, which called for an adoption assistance subsidy of \$1100.00 per month.
3. On June 26, 2015 Petitioner requested an amendment to the July 2012 adoption assistance agreement seeking an increase in the adoption assistance subsidy.
4. A DCF staff person conducted a home visit on July 14, 2015 to conduct a Child and Adolescent Needs and Strengths (CANS) assessment. That assessment was submitted to the Department on July 27, 2015.
5. On July 27, 2015 the Department sent Petitioner a request for completed emotional, behavioral and physical Confirmation of Needs (CON) forms. The forms were included with the request. It did note that the forms had to be completed and submitted within 90 days.
6. On August 17, 2015 the Department received completed emotional, behavioral and physical CON forms from [REDACTED]'s psychotherapist. Those forms actually indicated a supplement needs score lower than on the original assessment done in 2012. As a result, a second letter, dated September 28, 2015, was sent to Petitioner that again asked for completed CON forms and more information. The letter noted that the due date for the forms was October 27, 2015.
7. As of November 16, 2015 the Department had not received the CON forms and sent Petitioner a letter denying the request to amend the adoption subsidy agreement.

**DISCUSSION**

Adoption assistance is a benefit paid to facilitate the adoption of children with special needs. Wis. Admin. Code, §DCF 50.01(1). Once assistance is approved for an adopted child, the child remains eligible for the benefit until he reaches 18 years of age.

Of particular relevance here are the following provisions from the Wisconsin Administrative Code:

DCF 50.045 Request to amend the adoption assistance agreement following adoption.

- (1) REQUEST FOR REVIEW. Twelve months or more following adoption of a child with special needs under s. DCF 50.03 (1) (b) 1., 2., 3. or 4., at least 12 months since the receipt of a previous request under this section by the department, at least 12 months following an amended agreement under s. DCF 50.044, or within 120 days prior to the expiration of an amended agreement, adoptive parents with a current adoption assistance agreement and with a maintenance payment in the amount of \$0 or greater may file a request with the department for amendment of the agreement because they believe a substantial change in circumstances has occurred since the agreement was signed. If an amendment is in effect as a result of approval of an adoption assistance amendment request, the amendment will be in effect until the expiration date specified. The purpose of the amended agreement would be to change the amount of the monthly adoption assistance maintenance payment. An adoption assistance agreement may be amended more than once under the provisions of this section.

...

*Wis. Admin. Code, §DCF 50.045(1).*



- (2) FAMILY RESPONSIBILITY. To request that an agreement be amended, the adoptive family shall do all of the following:

- (a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child’s current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child’s current functioning.

...

*Wis. Admin. Code, §DCF 50.044(2)(a)-(c).*



**(3) DEPARTMENT RESPONSIBILITY.** If a request to amend an agreement is received, the department shall do all of the following:

(a) From a review of the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists to meet the eligibility requirements of s. DCF 50.03 (1) (b) 3. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department’s choice and at the department’s expense to provide information necessary in making the determination.

...

*Wis. Admin. Code, §DCF 50.044(3)(a).*

Here the information requested by the Department was not received within the time limits allowed by the Department under the Administrative Code. Petitioner has submitted additional records that postdated the Department’s November 2015 denial but the Division of Hearings and Appeals role is to review the department decision and the information that it had to make its decision, not to conduct a new review. Further, while the use of the term ‘may’ in §DCF 50.044(3)(a) suggests that the denial for lack of information in 90 days is discretionary there is no basis for reversing the Department denial.

I do note that the Administrative Code does permit another request to amend an adoption assistance agreement 12 months after the date of receipt of the last request by the Department. *See Wis. Admin. Code, §DCF 50.045(1).*

**CONCLUSIONS OF LAW**

That the Department correctly denied Petitioner’s July 2015 request to amend an adoption assistance agreement.

**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, **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 3rd day of October, 2016

\s \_\_\_\_\_  
David 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 October 3, 2016.

Adoption Assistance

[REDACTED]  
[REDACTED]