



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

In the Matter of

[REDACTED]

DECISION

FOS/140906

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Racine County Department of Human Services in regard to Foster Care, a hearing was held on July 16, 2012, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely and, if timely, whether the agency correctly denied Petitioner's application for a foster home license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Second Floor
Madison, Wisconsin 53703 -2866

By: Michelle Rainey, Foster Care Worker
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403 -2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On or about April 5, 2012 Petitioner submitted an application for a foster home license.
3. The agency sent Petitioner a letter dated April 19, 2012 that informed Petitioner that her application was denied. It was sent to Petitioner at the above address. The letter also contained appeal instructions. Those instructions informed Petitioner that she had 15 days from the date of the notice to file an appeal.
4. Petitioner filed an appeal with the Division of Hearings and Appeals on May 11, 2012. That is the date of receipt by the Division of Hearings and Appeals (the postmark date is May 10, 2012).

DISCUSSION

An applicant for a license to operate a foster home does have the right to appeal the denial of that license application. *See Wis. Admin. Code, § DCF 56.10 (1)*. Nonetheless, in order for the Division of Hearings and Appeals to make a determination on the merits of a matter it must have legal authority to do so. One component of legal authority is timeliness. That time limit for filing an appeal of the denial of a foster home license is described in the Administrative Code:

(2) REQUEST FOR A HEARING. A request for a hearing shall be in writing and shall be addressed to the department of a dministration's division of hearings and appeals. *The date of the request for a hearing shall be the date on which the request is received by that office.* Any request for a hearing shall be received no more than 15 days after the date of the notice of the agency decision to deny, revoke, or not renew the license.
Wis. Admin. Code, § DCF 56.10(2), (emphasis added).

Here Petitioner's appeal was received by the Division of Hearings and Appeals was May 11, 2012, a Friday. The 15th day from the date of the denial letter was May 4, 2012, a Friday. Petitioner's appeal was not, therefore, filed timely and the Division of Hearings and Appeals is without authority to make a determination on the merits of the denial of Petitioner's application for a foster home license.

I also note that even if Petitioner's appeal were timely, I would not find in her favor.

As part of the application processing the agency completed a background check of Petitioner. In that background check agency learned that Petitioner has had a history of contact with the department of human services with her own children when they were minors. That contact included Petitioner's children being on delinquency orders and having truancy problems. There were also complaints to the department indicating that Petitioner was not properly caring for her children. A significant variety of services were provided to Petitioner and her family yet she still struggled. Further, Petitioner did not report to her involvement with human services on her foster care application.

The legal basis for the agency denial of Petitioner's application is found in the Wisconsin Administrative Code at the following provision:

DCF 56.05 Licensee qualifications. (1) PERSONAL REQUIREMENTS AND BACKGROUND.
(a) *General.* 1. A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, who does not abuse alcohol or drugs or have a history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children or operating a foster home, as described in ch. DHS 12, and who exercises sound judgment and displays the capacity to successfully nurture foster children.
2. The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not he or she meets the requirements under subd. 1. Giving false information or withholding relevant information shall constitute grounds for denial or revocation of the license.
3. In determining whether a person is fit and qualified, the licensing agency shall consider the person's qualifications under this section and any history of civil or criminal violation of statutes, regulations or ordinances of the United States, this state, any other state, any local government or other U.S. jurisdiction substantially related to the care of children.
Wis. Admin. Code, § DCF 56.05.

Again even if timely, I would conclude that the evidence clearly indicates Petitioner does not meet these standards thus would affirm the agency denial.

CONCLUSIONS OF LAW

That Petitioner's appeal is untimely and the Division of Hearings and Appeals is without authority to make a determination on the merits of the matter.

THEREFORE, it is

ORDERED

That's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Racine County Department of Human Services - email
Department of Children and Families - email



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The preceding decision was sent to the following parties on September 7, 2012.

Racine County Department of Human Services
DCF - Foster Care