



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/142186

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 2, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the county agency properly refused to backdate petitioner's Child Care Benefits to May 1, 2012.

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: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner applied for CCB on May 3, 2012.
3. On or about May 21, 2012 petitioner began working in a transitional job (TJ).
4. After processing the required verifications and signature for her application, the agency issued a notice of decision on June 14, 2012 to petitioner informing her that effective May 1, 2012 she was eligible for Child Care in the first step of the process. The notice states, “ The second step is for you to get an authorization to approve payment to your provider. The authorization is for the care needed while you are in your approved activity. You may have completed this step by the time you have received this notice. If you have not and you want CC benefits, you must contact the Child Care Specialist at the Child Care administrative agency to receive authorization for services.” Exhibit 3.
5. Petitioner did not perform the second step by enrolling in the FSET program to get an authorization to approve payment to a Child Care provider.

DISCUSSION

Wisconsin Works (W-2) is a comprehensive series of programs designed to assist lower-income households in the transition from public assistance to gainful employment. The W-2 package includes a Child Care subsidy which is intended to allow parents of minor children to hold a job, attend school or participate in a number of other approved activities. See Wis. Stat. §49.155. An applicant for Child Care must also meet the financial eligibility criteria set forth in Wis. Stat. §49.255(1m). Once an applicant has been found to be eligible, payment of benefits, either directly to the child care provider or by way of reimbursement to the applicant, must be specifically authorized as to the identity of the provider, the approved rate and number of hours and the degree to which the applicant must contribute to the cost of child care.

This appeal concerns petitioner’s request for Child Care Benefits in May 2012. After processing the required verifications for her application, the agency issued a notice of decision on June 14, 2012 to petitioner informing her that effective May 1, 2012 she was eligible for Child Care in the first step of the process. The notice states, “The second step is for you to get an authorization to approve payment to your provider. The authorization is for the care needed while you are in your approved activity. You may have completed this step by the time you have received this notice. If you have not and you want CC benefits, you must contact the Child Care Specialist at the Child Care administrative agency to receive authorization for services.” Exhibit 3. The Child Care Authorization is a separate document which is specifically identified as such and which sets forth the number of hours and the hourly and/or weekly rate of payment that the county agency has approved and authorized.

The agency’s Case Comments indicate that petitioner was advised to enroll in the FSET program in order to get her authorization for CCB about one week after the notice of decision advised her to follow up with the authorization process. Exhibit 1. The agency also testified that petitioner would have received training on these issues in various capacities prior to applying for the CCB, and that she had called the agency and had been informed of her requirements to enroll in FSET in order to get authorized prior to filing this appeal. Petitioner testified that she was unaware of the FSET/authorization requirement, however, the notice was issued properly and it identified that it was petitioner’s duty to request the authorization. It is also clear under the policy that as to an approved activity in order to qualify for CCB, subsidized employment is not considered an approved activity for CCB, “including Transitional Jobs that are not a work experience as part of a FSET Employment Plan.” See *Wisconsin Shares Child Care Assistance Manual*, §1.5.3, available online at

<http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Based on these facts, the agency was acting according to policy. As such, I must find that the agency acted correctly.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency properly refused to backdate petitioner's Child Care Benefits to May 2012 as she did not complete the authorization process.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 5th day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Kenosha County Human Service Department - email
Department of Children and Families - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 5, 2012.

Kenosha County Human Service Department
Child Care Benefits