



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/142690

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2012, under Wis. Admin. Code, §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to child care services, a hearing was held on November 14, 2012, by telephone. A hearing set for October 17, 2012 was rescheduled at the parties' request.

The issue for determination is whether the agency made correct payments to petitioner's child care center when it did a backdated authorization.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Belinda Bridges, Theresa Miles
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care services for a foster child. The child care case closed April 1, 2012 and remained closed through June 30, 2012, due to agency error. Petitioner continued to take the child to child care during that period.

3. Petitioner filed this appeal concerning the ineligibility months. The agency determined that petitioner should have been eligible during the period in question and re-opened the child care retrospectively.
4. When the case was open the child attended on an enrollment basis.
5. When the agency re-opened the case it obtained the sign-in/sign-out sheets for the child. It then paid the provider at an hourly rate for only the hours the child attended. That left petitioner with a substantial bill based on weekly private-pay rates owed to the provider.

DISCUSSION

The issue here is one of first impression for me. Had petitioner's child care case not been closed erroneously, the provider would have been paid the authorized hours regardless of whether the child attended (the child missed time during family vacations and also missed various days due to illness and other reasons). Instead the agency paid only for hours actually attended, leaving petitioner owing the rest of the charges compiled during the period. For example, if the child was authorized for 40 hours but attended only 32 hours during one of the retrospective weeks, the agency paid the provider for just 32 hours retrospectively, but the provider would have been paid for 40 hours had the authorization been processed correctly in the first place. The result is that the provider was paid for 8 less hours, and it is billing petitioner for those hours.

I have scoured the Department Child Care Policy Manual for guidance on how a retroactive payment should be made, and I can find nothing. I find nothing saying that actual hours should be used, and I find nothing saying that authorized hours should be used regardless of actual attendance. What I do know is that, if the case had not been closed erroneously, the provider would have been paid the full authorized hours regardless of actual attendance because the child was authorized on an enrollment basis: "Enrollment based authorizations reimburse the child care provider for a set amount for a block of hours per week as long as the child attends for at least one hour per week." Manual, §3.6.11. At the same time, if the child did not attend at all during a week, it is possible that no payment would be made (see holding a slot policies at §3.11.0).

Given that this was an agency error, I conclude that the retroactive reimbursement should be made based upon the hours that would have been paid if not for the error, not the actual hours. Since it was agency error and petitioner did not realize that the child care was closed, he took the child to day care in good faith. He should not be penalized.

CONCLUSIONS OF LAW

When the agency re-opened petitioner's child care retroactively, it should have paid the provider based upon prospective enrollment-based hours, not on actual hours utilized during the back-dated period.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to issue supplemental child care payments to petitioner's provider for the period April 1 through June 30, 2012, based upon authorized hours on an enrollment basis, instead of being based on actual child care hours used by petitioner. The agency shall issue the supplemental payment within 10 days of this decision.

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 served and 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, Madison, Wisconsin 53703. 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 Madison,
Wisconsin, this 27th day of November, 2012

\sBrian C. Schneider
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 November 27, 2012.

Milwaukee Enrollment Services
Child Care Benefits