



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

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In the Matter of

[REDACTED]

DECISION

FOS/142978

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 09, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Richland County Health and Human Services in regard to Foster Care, a hearing was held on September 26, 2012, at Richland Center, Wisconsin.

The issue for determination is whether the respondent erred when it denied petitioner's application for a Foster Care licence.

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  
Madison, Wisconsin 53703

By: Amanda Coorough, Foster Care Worker  
Richland County Health and Human Services  
221 W Seminary St.  
PO Box 673  
Richland Center, WI 53581

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Richland County.

2. On July 26, 2012, the respondent sent a notice to the petitioner stating that her foster care license application was denied pursuant to DHS 56.06(1)(f)(3)(b), due to an October 27, 2004 substantiated finding of abuse and/or neglect against petitioner's husband. See, Exhibit 1.
3. The record does not establish an appeal of the substantiation, nor a request for a rehabilitation review.

### DISCUSSION

This Office does have jurisdiction to hear issues involving foster care licenses and in certain instances, substantiated findings of child abuse or neglect, although not at the same hearing. In 1998, the legislature enacted sec. 48.685, Wis. Stats., which provides for the review of criminal histories and child abuse records of all potential caregivers, including foster parents and non-client residents in the household. §48.685(2)(a), Stats., states that a child welfare agency may not license, or continue or renew the license of, a foster home, if the agency knows that:

3. That a unit of government or a state agency ... has made a finding that the person has abused or neglected any client or misappropriated the property of any client.
4. That a determination has been made under s. 48.981(3)(c)4 that the person has abused or neglected a child.

Based upon the mandate of §48.685, Stats., the department enacted Chapter DHS 12, Wis. Adm. Code. §DHS 12.10(1)(a) duplicates the requirements of §48.685(2)(a), Stats., in stating that **a child welfare agency may not license or renew the license of a foster home if the agency knows that the person has been found to have neglected a child.** §DHS 12.12 provides details concerning rehabilitation of a person found to have neglected a child and the process for making that determination.

When a caregiver of children is alleged to have abused or neglected a child, Wis. Stat. § 48.981(3)(c)4 requires an investigation of the allegation to determine if abuse or neglect occurred or is likely to occur. The result of the investigation is a conclusion that the allegation is substantiated or not substantiated.

Under the clear, unambiguous language of both §48.685, Stats., and §DHS 12.10, Wis. Adm. Code, the respondent had no choice but to revoke petitioner's foster care license. The allegations of abuse and/or neglect were substantiated by Kenosha County on October 27, 2004, under the §48.981, Stats., process, and those provisions provide the licensing agency with no discretion. The respondent may not license a person when a member of that person's household has a substantiated abuse or neglect finding.

Prior to October 5, 1998, a person who was found to have abused or neglected a child had no appeal right from the substantiation conclusion. However, with the passage of the Child Abuse Prevention and Treatment Act (CAPTA), state agencies are now required to provide an appeal process to people who have been found to have abused or neglected children. 42 U.S.C. §5106a. The reason for the appeal right is evident in CAPTA, upon which Chapter DHS 12 of the Wisconsin Administrative Code is based. If a caregiver is found to have abused or neglected a child, the caregiver can no longer be licensed or work in a foster home, day care center, child welfare agency, or other treatment center for children. See, Wis. Admin. Code §§DHS 12.04 and 12.10(1). This appeal right extends only to abuse or neglect findings that occur after October 5, 1998. There still is no right to appeal a substantiation made before that date.

In the case, during the September 26, 2012, hearing, petitioner's husband acknowledged the October 27, 2004 substantiated finding of abuse and/or neglect. The petitioner indicated that the substantiated allegations arose during a custody dispute between petitioner's husband and his now ex-wife. She notes that he was never convicted, and, in fact, the criminal charges were dismissed. Petitioner's husband

allegedly asked social services to appeal the substantiation, but the record provides no further information in this regard. As such, I have no evidence of petitioner's husband's pursuit of any CAPTA appeal with the Division of Hearings and Appeals. Furthermore, neither testimony at hearing nor the record in this matter reveals a request for a rehabilitation review by petitioner's husband.

Wisconsin law provides that a child welfare agency "...may not license, or renew the license of, a foster home..." if the licensee has been determined to have a recent "substantiated" abuse or maltreatment finding made against the foster licensee or applicant, under WI Stat § 48.981(3)(c)4. See also, WI Stat § 48.685(4m) (a); WI Stat § 48.685(4m) (a) (4). The only way that such a person can again be a foster licensee is to seek a Rehabilitation Review from the Department, and to establish in such an action that he or she is rehabilitated. See, WI Stat § 48.485(5); WI Admin Code § DHS 12.12. (5). Because petitioner has not established an appeal of the substantiation of abuse and/or neglect and has not established any pursuit of a rehabilitation review, Wisconsin law is clear that the Department's action to deny petitioner's foster home license must be sustained.

### **CONCLUSIONS OF LAW**

1. There is an October 27, 2004 substantiated finding of abuse and/or neglect against the petitioner's husband, who is a member of her household.
2. The respondent may not license a person when a member of that person's household has a substantiated abuse or neglect finding.
3. The respondent and/or its agents have correctly denied the petitioner's foster license application.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby 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 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 16th day of November, 2012

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/sPeter McCombs  
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 16, 2012.

Richland County Health and Human Services  
DCF - Foster Care