



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/143511

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care (CC), a hearing was held on October 2, 2012, at Madison, Wisconsin.

The issue for determination is whether the CC program correctly failed to pay the petitioner's CC provider for May and June, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (interpreter: Christine Chapman)

[REDACTED]

Respondent:

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

By: A. Esterrich, lead worker
Dane County Department of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner had an open CC case prior to June 30, 2012. Specifically, she was certified as eligible for the CC program in May and June, 2012. The notice advising the petitioner of her CC

eligibility, dated March 28, 2012, states that “the second step is for you to get an authorization to approve payment to your provider.”

3. The petitioner was on a leave of absence from her employment prior to May 2, 2012, so CC benefits were not being authorized/paid out on her behalf when May 2012 began. On *April 23*, 2012, the petitioner reported that she was returning to work on May 2 and would need CC authorization. On April 24, 2012, the agency sent out an employment verification form as a precondition to creating a new CC authorization for the petitioner. See, Exhibit 7C. The April 24 notice specified a deadline of May 2, 2012, for return of the verification. An authorization must be created before the CC benefit can be paid to a daycare center/provider.

No verification was received until June 19, 2012. Nonetheless, on May 21, 2012, the agency issued written notice to the petitioner advising that her CC certification was ending June 30, 2012, due to excess income. The petitioner telephoned the agency on May 29 and June 28, 2012, to inquire why an authorization had not been created. Both times, the agency responded that it had not received verification of the petitioner’s employment.

4. On June 19, 2012, the petitioner submitted one month’s paystubs from her employment at [REDACTED]. Based on that information, the agency determined that the household was over the income limit (200% Federal Poverty Level), and therefore ineligible for CC certification. On June 20, 2012, the agency issued written notice to the petitioner advising that her CC certification was denied from July 1, 2012 forward.
5. At hearing, the petitioner stated that she is not contesting the closure of her case for excess income effective July 1, 2012.

DISCUSSION

The petitioner’s appeal was originally understood to be an appeal from the discontinuance of CC effective July 1, 2012. However, at hearing the petitioner clarified that she does not contest the July 1 action. Rather, she disputes the agency’s failure to create a CC authorization for her children for May and June, 2012, which has left her with an unpaid CC bill exceeding \$2,000.

Wis. Stat § 49.155 authorizes the department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also, Wis. Admin. Code chs. DWD 12 and 56. The department has a *Child Day Care Manual (Manual)* that provides the specific policies for the program. (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>). The *Manual*, §1.4.8, states that a recipient must be engaged in one of eight enumerated activities in order to be authorized for childcare benefits. With the benefit of hindsight, there is no dispute that the petitioner was engaged in the qualifying activity of unsubsidized employment from the first week in May 2012 through the date of hearing.

When the petitioner telephoned the agency on April 23 to report that she would return to work on May 2, the agency reasonably requested verification of the return to work. However, when the agency received that verification, it should have created the authorization for May and June. The policy that pertains to creating an authorization states as follows:

... If a family that has been determined eligible for child care assistance does not request an authorization for child care reimbursement until several months’ initial eligibility has been determined, the authorization may be backdated to only the first of the month of the request for authorization.

Note: This limit applies only to initial eligibility determinations. For families with on-going eligibility, late requests for child care authorizations should be honored if all work criteria are met and eligible care has been provided .

CSAW allows backdating of authorizations and attendance up to three months in the past. If an agency needs to back date an authorization further than three months, a worker with a 'retro' security access must enter those authorization s. The names of workers with 'retro' security privileges are available from the Child Care Helpdesk or your Bureau of Regional Operations Child Care Coordinator.

Manual, §3.6.28.

3.8.2 Changing/Ending Authorizations

... There is no requirement under the statute or administrative rule regarding how an authorization must be ended or changed. The Bureau ... has established the following policies in order to give parents and providers a fair amount of notice of change and create statewide consistency regarding the process of ending/changing authorizations.

...

3.8.6 When Changes are Reported Prior to Taking Effect

If the change in the authorization will result in an increased child care benefit, the current authorization must be ended the Saturday just prior to the change taking effect and the new authorization must begin the next day.

If the change is occurring within the next 10 days and will result in a decreased child care benefit, the authorization must be ended effective upcoming Saturday.

Manual, 3.8.2 & 3.8.6. Because the change reported by the petitioner on April 23 resulted in an increased child care benefit (due to increased work hours), the policy directs the ending of the old authorization (in this case, no authorization) on "the most previous Saturday." In this case, that would have been an ending date prior to the petitioner's commencement of employment in May . Per policy, the new authorization should have begun when the petitioner's employment began in May 2012 .

CONCLUSIONS OF LAW

1. When the agency received the petitioner's employment verification in June 2012, it should have retroactively authorized the appropriate CC for the petitioner for May and June, 2012.

THEREFORE, it is

ORDERED

That the petition is remanded to the county agency with instructions to create the appropriate (consistent with the received verification) CC authorizations for the petitioner's children for May and June 2012. This action shall be taken within 10 days of the date 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 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 Madison,
Wisconsin, this 11th day of December, 2012

\sNancy J. Gagnon
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 December 11, 2012.

Dane County Department of Human Services
Child Care Benefits