



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCB/142927

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a telephonic rescheduled hearing was set for December 18, 2012, at Milwaukee, Wisconsin. DCF Attorney Joseph McCleer and MES worker Theresa Miles appeared for that December 18, 2012 hearing. However, the petitioner failed to appear for the December 18, 2012 hearing and did not establish any good cause for such failure.

At the request of petitioner, a hearing scheduled for October 16, 2012 was rescheduled. A telephonic hearing was begun for a brief period on November 13, 2012 with DCF child care worker Theresa Miles and the petitioner. However, that hearing was rescheduled primarily because petitioner indicated that LAW Attorney Pat DeLessio would be representing her in this appeal.

On November 28, 2012, DCF legal counsel, Joseph McCleer sent to DHA and to petitioner DCF's Motion in Support of Dismissal of Petition. Attorney DeLessio sent a December 21, 2012 letter to DHA (received at DHA on December 26, 2012) and DCF stating that Legal Action has not been retained to represent the petitioner in the above-captioned case. The petitioner failed to submit to DHA any response to the Department's Motion to Dismiss even as of the date of this Decision.

The issue for determination is whether the Department's Motions to Dismiss should be granted because petitioner is not eligible to receive child care authorizations to send her children to [REDACTED] under Wisconsin statute and Department policy and failure to appear for her December 18, 2012 hearing.

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: DCF Attorney Joseph McCleer and Theresa Miles, child care worker

Milwaukee County Department of Human Services
 1220 W. Vliet Street
 1st Floor, Room 106
 Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who has six children with her husband, [REDACTED].
2. The petitioner applied with Milwaukee County Department of Human Services for child care authorizations for her children to receive child care at [REDACTED] a licensed camp child care center.
3. [REDACTED] ([REDACTED]) is a not-for profit corporation incorporated in Wisconsin.
4. [REDACTED] is named in the Articles of Incorporation as the initial registered agent, as one of three initial directors, and as the sole incorporator of the corporation. See Exhibit A.
5. The Articles of Incorporation list the address of the initial registered office of the corporation at [REDACTED]. That address is also listed on the [REDACTED] "Camp Handbook" as the "Office." See Exhibit B.
6. [REDACTED] is the home address of petitioner and her husband, [REDACTED].
7. In the license application for [REDACTED] (received by the Department on May 12, 2009), [REDACTED] listed himself as the owner/president of the governing board, the petitioner to whom all official notices, application materials will be sent and the contact person for pre-camp licensing review. See Exhibit D.
8. Mr. [REDACTED] is currently the president/director, and one of the four board members of [REDACTED].
9. Milwaukee Enrollment Services (MES) sent a June 26, 2012 notice to the petitioner indicating that some of petitioner's children may be authorized for child care, but that the second step to complete authorization is to determine whether payment to the intended provider can be approved.
10. On November 28, 2012, DCF legal counsel, Joseph McCleer sent to DHA and to petitioner DCF's Motion in Support of Dismissal of Petition. See above Preliminary Recitals.
11. The petitioner did not submit to DHA any response to the Department's Motion to Dismiss.
12. The petitioner failed to appear for the December 18, 2012 hearing and did not establish any good cause for such failure.
13. Attorney McCleer sent a December 19, 2012 Motion to Dismiss to DHA stating that petitioner's appeal should be dismissed due to petitioner's failure without any good cause to appear for the scheduled December 18, 2012 hearing.

DISCUSSION

Under Wis. Stats. § 49.155(3m)(d), it provides that “No funds distributed [for child care services] may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child.” Department policy also states: “Authorizations are not allowed for a parent to receive Wisconsin Shares child care assistance funding for caring for their children regardless of the type of provider (Certified, Licensed Family, Licensed Group) or the type of ownership (the parent owns all or part of the facility as an individual, sole proprietor, partnership, or stockholder in a corporation. Wisconsin Shares Child Care Manual 3.6.27.”

In his Motion to Dismiss, Attorney McCleer argued convincingly with attached Exhibits that petitioner’s husband operates as the president of ██████████ and because he is the father of the children for whom petitioner is seeking authorizations, petitioner is not eligible to receive authorization for her children to attend ██████████. The petitioner argued that her husband is not the “owner” of ██████████, as ██████████ is a not-for-profit corporation. However, the Department responded that control can be dispositive in determining ownership interest of a corporation pursuant to Wis. Stat. § 49.155(7m)(b). Mr. McCleer correctly asserted petitioner’s husband is the president/director of ██████████ and is one of only four board members. See above Findings of Fact. Based upon the facts of this case, Mr. ██████████ is an “owner” of ██████████ and thus makes his children not eligible for child care authorization to attend ██████████. The petitioner did not submit to DHA any response to the Department’s Motion to Dismiss to refute the Department’s Motion. Furthermore, petitioner failed to appear for the December 18, 2012 hearing and failed to establish any good cause for such failure to appear. Accordingly, based upon the above, I conclude that the Department’s Motions to Dismiss are granted because petitioner is not eligible to receive child care authorizations to send her children to ██████████ under Wisconsin statute and Department policy, and because petitioner abandoned her appeal by failing to appear without good cause for her December 18, 2012 rescheduled hearing.

As dicta, Mr. McCleer stated in his Motion that: “while petitioner’s children are not eligible for Shares authorizations to attend ██████████ they are presently eligible for Shares authorization to receive child care elsewhere.”

CONCLUSIONS OF LAW

The Department’s Motions to Dismiss are granted because petitioner is not eligible to receive child care authorizations to send her children to ██████████ under Wisconsin statute and Department policy; and due to petitioner’s abandonment of her appeal by failing without good cause to appear for her December 18, 2012 rescheduled hearing.

THEREFORE, it is

ORDERED

The petitioner’s appeal is hereby Dismissed as the Department’s Motions to Dismiss are granted.

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 18th day of January, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 18, 2013.

Milwaukee County Department of Human Services
Child Care Benefits