



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CCB/143171

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 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 agency correctly determined the amount of the petitioner's household's CC co-payment liability from June 2 through October 31, 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
Madison, Wisconsin 53703

By: Ryan Grimes, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
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, who is disabled, heads a household of five (self, wife, 3 children). His wife and children were CC-eligible as of January 2012. The petitioner joined the case in May 2012, and the case was then reviewed. The petitioner's spouse is employed.
3. Per a notice dated July 12, 2012, the Department advised that CC benefits for the children began June 1, 2012. The petitioner's appeal is timely with respect to CC changes from June 2, 2012 forward.
4. On July 16, 2012, the Department issued a *CC Authorization Information* memo to the petitioner's household. That memo advised that 21 hours of CC weekly had been authorized for two of the children to September 1, 2012, with a total weekly co-payment of \$37.
5. The above co-payment determination was calculated on the following income assumptions: Petitioner's Social Security (SS) of \$913.40, total children's SS of \$498, wife's gross earnings of \$1,045. Although the agency incorrectly split the children's SS income between two children rather than three, the total was correct.
6. *June, July:* At hearing, the petitioner asserted that too much income was being counted for his wife during part of the period. Unfortunately, the corporate employer will not fill out the agency's Employer Verification of Earnings form, which makes a correct earnings determination more difficult. At hearing, the petitioner produced no June paystubs, and only one bi-weekly paystub for July with \$759 gross earnings. Assuming that this paystub was representative of July earnings, the wife's gross July earnings were \$1,518 (\$759 x 2). This is more than the \$1,045 budgeted by the agency, so there is no basis for lowering the CC co-payment for June or July 2012.
7. *August:* At hearing the petitioner produced one bi-weekly paystub from August (8/10), with \$580 gross earnings. See, Exhibit 3. Assuming that this paystub was representative of August earnings, the wife's gross August earnings were \$1,160 monthly (\$580 x 2). This is more than the \$1,045 earnings budgeted by the agency, so there is no basis for lowering the CC co-payment for August 2012.
8. On July 23, 2012, the agency issued a *Notice of Eligibility – Child Care* which stated that the case had been reviewed and that the children were eligible for CC from September 1, 2012 forward. The household's income was identified as the petitioner's SS of \$913.40, the wife's earnings of \$1,045.35, and total children's SS of \$498 (mistakenly shown as being for 2 children instead of 3). These amounts total \$2,456.70.
9. *September:* At hearing, the petitioner produced one bi-weekly paystub from September (9/21), with \$400.32 gross earnings, and a year-to-date change of \$1,550.76 for the August 10 – September 21 (6 week) gap. The Y-T-D change averages \$1,033.84 for 4 weeks/one month. The best evidence available (the average) indicates that the agency's projection of the wife's earnings (\$1,045) as of the end of August (for September) was essentially correct. However, the \$400.32 check from late September is a concern for projecting earnings for *October*.
10. On September 10, 2012, the agency issued a *CC Authorization Information* memo to the petitioner, advising that CC had been authorized from 9/2/2012 to 3/2/2013 for two children, with a total weekly co-payment of \$37.
11. The petitioner testified to making numerous contacts to the agency (*e.g.*, saw a supervisor Joanne in July) to report changes to household income. *October:* The petitioner's SS rose to \$1,013.40 for October, with total children's SS unchanged. Based on the best information available, the wife's projected earnings for October were \$800.64 (\$400.32 x 2). These amounts total \$2,312.04.

12. The agency updated the wife's income for all programs immediately after the October 2, 2012 hearing, affecting benefits from November 1, 2012 onward.

DISCUSSION

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. There is no dispute that the petitioner is disabled, and that his wife was engaged in the qualifying activity of unsubsidized employment throughout the period in question.

The CC program is means-tested, and parents are assessed co-payments based on their income level. *Manual*, § 3.7.0. The Department's policy manual correctly observes that there is nothing in statute or administrative code that provides direction on changing authorizations. *Manual*, §3.8.2.

A review of the limited paystub verification supplied by the petitioner at hearing does not lead to a change in the CC co-payment determinations for June, July, August, or September 2012. It is possible that the small drop in the household's *total* income to \$2,312.04 for October may result in a small change to the co-payment liability for October. Accordingly, this petition will be remanded to the county agency to re-calculate the petitioner's CC co-payment liability for October 2012, and to inform the petitioner of the result of that re-calculation.

CONCLUSIONS OF LAW

1. The agency correctly calculated the petitioner's CC co -payments for June, July, August and September 2012.
2. The agency must re-calculate the petitioner's CC co -payment liability for October 2012 based on total household income of \$2,312.04.

THEREFORE, it is

ORDERED

That the petition is remanded to the county agency with instructions to re- calculate the petitioner's CC co -payment for the month of October 2012 only, and make the appropriate reimbursement adjustment. This action shall be taken within 10 days of the date of this decision. In all other respects, the petition is 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 2nd day of January, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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 January 2, 2013.

Dane County Department of Human Services
Child Care Benefits