FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCB/145144

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on December 17, 2012, at Oshkosh, Wisconsin.

The issue for determination is whether respondent erred in denying Child Care benefits to petitioner.

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: Leslie Vosters
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. Petitioner applied for Child Care benefits on or about October 3, 2012.
3. At all times material hereto, petitioner was employed by [redacted] of [redacted] Petitioner's husband is self-employed.

4. Respondent determined that petitioner was not eligible for Child Care benefits due to its determination that petitioner's husband's self-employment expenses outweighed his self-employment income, resulting in a net income of $0.00.

5. Petitioner filed the instant appeal on November 7, 2012.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3).

The only issue before this administrative law judge, based upon the instant appeal of November 7, 2012, is the agency denial of Child Care benefits determination on or about October 27, 2012.

The Department's Child Care Manual, at Chapter 3, p. 33, directs as follows:

> Authorizations for self-employment are only allowed to the extent that they support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage.
>
> The method for determining monthly-adjusted self-employment income is provided in the Child Care Manual at § 3.6.1.3. The state minimum wage is $1,091.00 to qualify for 35 hours per week of child care. Ibid. The Manual specifically directs as follows:
>
> Agencies will determine adjusted self-employment income by entering gross receipts and subtract allowable expenses. **Depreciation is not an allowable expense.** If the expenses exceed the gross receipts, the self-employment income will be zero. Those additional expenses, which exceed the gross receipts, will not be subtracted from other earned income in the household.

Child Care Manual, § 1.6.17 (emphasis added)

Here, the agency computed the petitioner's self -employment income via the use of Department of Health Services' form, i.e., "SELF -EMPLOYMENT INCOME REPORT." The DHA form captures the essence of the Department's directions for self -employment income for Child Care benefits, i.e., in a nutshell, gross income, minus expenses, plus depreciation add-back, pro-rata, equals monthly adjusted self-employment income. I have reviewed the computations of these items in the DHCAA form signed by petitioner's husband. I can find no error in the agency's computations of the household's monthly adjusted self-employment income, nor has the petitioner pointed to any specific errors. The household was not generating self-employment income that was anywhere close to the minimum wage per week, and as such it is not eligible for Child Care benefits.

The petitioner raised many issues that have no impact on the determination of this case. While I empathize with petitioner's financial situation, at most, the petitioner is raising questions of the "fairness" of the process. A question of fairness is what is considered a matter of equity. I do not have authority to decide issues based on equity. Case law in Wisconsin has recognized that the powers of administrative agencies are limited to those expressly granted by the legislature or necessarily implied by the statutes. See, *DOR v. Hogan*, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

On the preponderance of the evidence in this record, the agency discontinuance action must be sustained.

CONCLUSIONS OF LAW

Respondent correctly denied petitioner's application for Child Care benefits. Petitioner was not engaged in approved child care activities becaus e petitioner's husband's self-employment income was less than the state minimum wage.

THEREFORE, it is **ORDERED**

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 20th day of February, 2013

\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 February 20, 2013.

Winnebago County Department of Human Services
Child Care Benefits