



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
c/o Atty Robert Meyeroff

DECISION

FOS/145809

PRELIMINARY RECITALS

Pursuant to a petition filed December 7, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Children's Service Society of Wisconsin in regard to Foster Care license revocation, a hearing was held on February 20, 2013, at Milwaukee, Wisconsin.

The issue for determination are (1) whether the petitioner's appeal was timely filed, and (2) whether revocation of the petitioner's foster home license was correct.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
c/o Atty Robert Meyeroff

Petitioner's Representative:

Attorney Robert N. Meyeroff
633 West Wisconsin Ave., Suite 605
Milwaukee, WI 53203-1925

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Kristin Kopcha, Out of Home Care Mgr.
Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. The petitioner has been a foster home licensee since 2008. The Department's agent issued written notice of license revocation on July 18, 2012. That notice contains the following information regarding the appeal deadline:

A request for hearing shall be in writing and shall be addressed to the department of administration's division of hearing and appeals. The date in the request for a hearing received shall be the date in which the request is received by that office. Any request for a hearing received more than 10 days after the fifth (5th) day following the notification of the decision of the agency that is being appealed shall be denied. The request for a hearing should be sent to:

The Division of Hearings and Appeals
P.O. Box 7875
Madison, WI

See Exhibit Respondent-D. The notice was sent to the petitioner's correct address and was not returned as undelivered to the sender.

3. The petitioner received the July 18 revocation letter. She testified that she did not promptly appeal because her feelings were hurt, and she was not in adequate emotional condition to appeal until after the appeal period had run.
4. The petitioner appealed to this office on December 10, 2012 (mailed December 7, 2012). December 10 is more than 15 days after the July 18 revocation notice date.

DISCUSSION

To give the administrative law judge the legal authority to review a licensing agency's license revocation decision, the licensee must file a hearing request within the appeal deadline. The agency's revocation notice identified the correct appeal deadline, and parrots the language from a predecessor code provision (§ HFS 56.10). This instruction is consistent with the deadline contained in the current state code:

DCF 56.10 Hearing. (1) APPEAL. An applicant for a license to operate a foster home who is denied a license or a licensee whose license is revoked or whose application for renewal of the license is denied may appeal the decision by asking for a hearing in accordance with ch.227, Stats.

(2) REQUEST FOR HEARING. A request for a hearing shall be in writing and shall be addressed to the department of administration's division of hearings and appeals. The date of the request for a hearing shall be the date on which the request is received by that office. Any request for a hearing shall be received more than 15 days after the date of the notice of the agency decision to deny, revoke, or not renew the license.

Wis. Admin. Code §DCF 56.10(1),(2).

In this case, the petitioner filed her hearing request with the Division of Hearings and Appeals well after the deadline. Thus, under the law, I am unable to issue a decision that reviews the merits of her appeal

CONCLUSIONS OF LAW

1. This ALJ lacks jurisdiction to consider the merits of the petitioner's foster home license revocation appeal, because the appeal was filed more than 15 days after denial notification, per Wis. Admin. Code §DCF 56.10.

THEREFORE, it is

ORDERED

That 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 21st day of June, 2013

\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 June 21, 2013.

Children's Service Society of Wisconsin
DCF - Foster Care
rmeyeroff633@sbcglobal.net