



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/146301

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Chippewa County Department of Human Services in regard to Child Care, a hearing was held on January 23, 2013, at Chippewa Falls, Wisconsin. The record was left open for seven days at the petitioner's request.

The issue for determination is whether the petitioner's household income exceeds the child care benefit limit.

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: Rhonda Kimmer

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner lives with his girlfriend, M.P., and their child.
3. M.P. earns \$150 a month from self-employment.

4. The petitioner receives \$243 in Veteran's benefits and \$2,255.33 in earned income each month.
5. One hundred eighty-five percent of the federal poverty level is \$2,856.71; 200% of the federal poverty level is \$3,088.33. *Medicaid Eligibility Handbook*, § 39.5.

DISCUSSION

Child Care Benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The income limit for new applicants is 185% of the federal poverty level and 200% of federal poverty level "for an individual who is already receiving a child care subsidy." Wis. Stat. § 49.155(1m)(c)1. Those levels are currently \$2,856.71 and \$3,088.33.

The petitioner lives with his girlfriend and their child. She has been receiving child care benefits but, because of the agency's error, his income was not counted when determining those benefits. The agency claims that he earns \$1,202.36 every other week from Best Buy, which when multiplied by 2.15 to convert it to a monthly amount gives him \$2,585.07. (Biweekly amounts are multiplied by 2.15 rather than two because dividing the 52 weeks in a year by the 12 months equals 4.3 weeks per month and not four; those paid every other week receive an average of 2.15 paychecks per month.) In addition, he receives \$243 per month in VA benefits and M.P. earns \$150 from self-employment for a total of \$2,978.07. Because this exceeds 185% of the federal poverty level, the agency contends that she should never have received this benefit and now seeks to end it.

The petitioner contends the agency overstated his gross income because it based that income on his earnings in November and December, Best Buy's two busiest months. He provided his 2012 W-2, which shows that his total income for the year was \$27,064.02, or \$2,255.33 per month. This figure averages out the peaks and valleys of his earnings. Other than during normally busy periods, there is no evidence that he received a significant pay raise or increase in hours during the year. Because of this, I find that his average monthly income for the year reflects his current income more accurately than the agency's figure and will use it when determining whether he and M.P. remain eligible for benefits. Assuming that his monthly earned income is \$2,255.33 lowers his total monthly household income to \$2,648.33. Because this is less than 185% of the federal poverty level, he remains eligible for child care benefits.

The parties seemed to believe that this matter concerned an overpayment of benefits. However, none of the documents in the file indicate that any notice of overpayment was sent out and no evidence was introduced in the hearing to establish the amount of any alleged overpayment. As a result, this issue is not before me. I note, nevertheless, that although the agency can still bring an overpayment claim because this issue has not been adjudicated, it does not appear that the petitioner's household income or the poverty level have changed since M.P. began receiving child care benefits, which suggests that there has not been an overpayment.

I also note that because M.P. has been found eligible for benefits, an argument can be made that the question of whether her household income allows her to continue to receive those benefits should have been based upon 200% rather than 185% of the federal poverty level because the program's statute indicates 185% applies "for an individual who is already receiving a child care subsidy." I will not decide this issue because it is not necessary for the determination of the matter before me.

CONCLUSIONS OF LAW

The petitioner and M.P. remain eligible for child care benefits because his household's income is within the program's limit.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has continued the petitioner and M.P.'s eligibility in the child care program program. (If the benefits ended, the agency shall reinstate them retroactive to the date they ended.)

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 7th day of February, 2013

\sMichael D. O'Brien
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 7, 2013.

Chippewa County Department of Human Services
Child Care Benefits