



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/147037

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 1, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on May 8, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied child care benefit (CC) coverage to the petitioner for December 2012, based on lack of cooperation with the child support agency.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Katherine May, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner had an open CC case prior to December 2012. The petitioner works full-time at [REDACTED], and took her two children (IM, MH) to daycare while working, at all times relevant hereto.

3. In October 2012, the child support agency determined that the petitioner was being uncooperative, and that agency sent an email to the CC program, advising of this noncooperation. The noncooperation in question was the petitioner's failure to produce IM and MH for DNA testing.
4. On October 23, 2012, the Department issued written notice to the petitioner advising that her CC would end effective December 1, 2012.
5. The petitioner telephoned some person in the bureaucracy at the 12<sup>th</sup> & Vliet building on December 15, 2012, and asked what was needed to avoid a noncooperation sanction. The male worker responded that the petitioner needed to appear for a DNA test. A test was scheduled for January 11, as that was the first date that the petitioner could get time off from her job.
6. The petitioner appeared with her children for DNA testing on January 11, 2013, and filed a new CC application on January 15. The Department then lifted her CC noncooperation sanction and commenced benefits effective January 1, 2013.

### 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, *W-2 Manual*, 15.2.0. The department has a *Child Day Care Manual (Manual)* that provides the specific policies for the program. The *Manual* may be viewed on line at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

The child care subsidy program's (CC) authorizing statute contains financial and nonfinancial eligibility criteria. If applicant parents do not meet the nonfinancial and financial eligibility criteria, then CC cannot be granted. One nonfinancial criterion is that the CC-receiving parent must cooperate in establishing the parentage of the child:

**(1m) ELIGIBILITY.** A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care of child ... if the individual meets all of the following conditions:

- (a) The individual is a parent ...
- (b) Except as provided in par. (bm), the individual meets the eligibility criteria under all of the following:
  1. Section 49.145(2)(c),(f) and (g);...

Wis. Stat. §49.155(1m). The cross-referenced provision at Wis. Stat. §49.145(2)(f) declares:

1. Subject to subd. 2., all of the following conditions are met:
  - a. Every parent in the individual's Wisconsin works group fully cooperates in good faith with efforts directed at establishing the paternity of any minor child of that parent regardless of whether the parent is the custodial or noncustodial parent of that child. Such cooperation shall be in accordance with federal law and regulations and rules promulgated by the department applicable to paternity establishment and may not be required if the parent has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

See, in accord, the *Manual*, at § 1.4.7.

State code requires a custodial parent who receives W2 or CC to cooperate by, among other things, attending interviews and submitting to genetic tests pursuant to judicial or administrative order. Wis. Admin. Code § DCF 102.03(1)(a), (2)(a). The code definition of "noncooperation" includes failure to

appear for a genetic test. *Id.*, (4)(a). The acceptable reasons for missing a genetic test are stated in the code as follows:

**(5) ADEQUATE REASON.**

**(a)** Adequate reason for a custodial parent's failure to respond to a written communication or failure to attend an appointment, genetic test, or hearing or other legal proceeding includes any of the following:

1. Personal or family illness or injury.
2. Family crisis.
3. Breakdown in transportation arrangements.
4. Inclement weather that causes a general breakdown in travel.
5. Failure to receive a hearing notice, appointment notice, or written request for information due to a demonstrable mail problem, address change, or extended time away from home.
6. Other reasonable circumstances as determined by the child support agency or the department.

*Id.*, (5)(a).

When noncooperation has occurred, the household's sanction remains in place until the parent has performed "the act of cooperation."

**(8) REMEDYING NONCOOPERATION.** An individual who wants to restore cooperative status after being determined noncooperative shall demonstrate cooperation by performing the act of cooperation in sub. (2) that the individual failed to perform and that became the basis of the noncooperation finding. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate.

*Id.*, (8).

There is no dispute that the petitioner failed to undergo DNA testing back in October 2012, and that she did not undergo the testing ("remedy the noncooperation") until January 2012. She was notified on October 23, that she would not be eligible for CC from December 1 onward, due to noncooperation. She chose not to contact the Department until December 15, at which time she was unavailable (due to work schedule) to appear for a testing appointment until January 11. The petitioner complains that the worker she spoke to on December 15 incorrectly stated that the petitioner's December CC coverage would be restored if she appeared for the January 11 appointment, and that she relied on that incorrect statement. Nonetheless, state code requires sanction until the act of cooperation occurs, not when the parent calls in. The parent was given a testing appointment within 30 days of her December 15 call. Perhaps she should not have waited from October 23 until December 15 to call in for an appointment. I will uphold the agency's non-cooperation sanction for December 2012.

### **CONCLUSIONS OF LAW**

1. The Department correctly determined that the petitioner failed to cooperate with a child support agency request for genetic testing, and therefore correctly discontinued the petitioner's CC eligibility December 2012.

**THEREFORE, it is**  
That the petition is dismissed.

**ORDERED**

**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 27th day of June, 2013

---

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



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 27, 2013.

Milwaukee Enrollment Services  
Child Care Benefits