



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/149907

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 07, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Washburn County Department of Social Services in regard to Child Care, a hearing was held on July 23, 2013, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to additional Child Care hours in the summer if that is the only time her husband works.

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: Susan Connoway

Washburn County Department of Social Services  
110 W 4th Avenue  
PO Box 250  
Shell Lake, WI 54871

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. The petitioner and her husband are caretaker relatives of their grandchild.

3. The petitioner and her husband are self-employed, holding three jobs between them. She works throughout the year cleaning houses. He does landscaping and painting during the summer.
4. The petitioner earns \$5,286 per year. This is less than her husband earns.
5. The county agency allowed the petitioner 14 hours of subsidized Child Care per week.

### DISCUSSION

The Wisconsin Shares Child Care program provides Child Care assistance to W-2 participants who participate in approved activities. This category includes caretaker relatives who are legitimately self-employed. Wis. Stat. § 49.155(1m)(a); *Day Care Manual*, §§ 1.1.1. and 1.5.3. 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. Child Care policy found at *Day Care Manual*, § 3.6.1.2., states: “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.” If both parents are employed or in some other approved activity, “[e]ligibility for child care is only for the overlapping hours when both parents are in approved activities.” *Id.*, 1.4.8.2.

The petitioner and her husband are caretaker relatives of their grandchild. They are both self-employed. She works throughout the year cleaning houses, and he works as a painter and landscaper in the summer. The county agency used her income, which is \$5,286 per year, and less than his, to determine the number of hours of Child Care they are entitled to. It divided this amount by 12 to get a monthly total, then by 4.3 to get a weekly total, and finally by 7.25—the minimum wage—to get the number of hours of Child Care. The amount allotted was 14. The petitioner does not challenge the agency’s figures or calculations. Rather, she argues that the agency ignores that she and her husband need all of the hours of Child Care in the summer, when he is working, and none during the rest of the year when the child is in school. This means that the hours should not be distributed evenly throughout the year.

I understand the logic of the petitioner’s position. As is true of many programs, the Child Care program averages seasonal income throughout the period for which someone is eligible. A school bus driver, for example, might receive \$50 of FoodShare in the summer and continue to receive \$50 in the school year, even though her income fluctuates significantly during the year. This makes sense because one assumes she will save money earned during the school year for the summer and that the amount of food she needs to eat will not change throughout the year. But while a seasonal worker requiring Child Care can still save money while she is working and spend it the rest of the year, her need for Child Care, unlike her need for food, is directly proportional to the amount of work she does at any particular time. Child Care policy requires agencies to consider the “number of hours of care a child needs per week for their parents to participate in their approved activities.” *Id.*, § 3.6.1. If the number of hours varies from week to week, one can argue that the number of hours subsidized should also vary.

However, this logic does not transfer directly from situations where there is a single parent, or where both parents are working at the same time in seasonal work, to a situation where both parents are working at different times, as is the case with the petitioner and her husband. In situations such as hers, when one parent is not working, the other is available to care for the child. Child Care policy requires agencies to assume that a self-employed person is working no more than the number of hours a person earning minimum wage would have to work to earn what the self-employed person earned. As stated earlier, the petitioner earned an amount that would require her to work 14 hours per week to earn minimum wage. This was not seasonal work, so the agency correctly averaged it throughout the year. It is true that her husband works more than this in the summer, but Child Care is only allowed when their working hours overlap. Because I must assume she is working only 14 hours per week, I must also assume that there are no more than 14 hours in a week when their work hours overlap. Therefore, I must uphold the agency’s decision to allow 14 hours of subsidized Child Care.

**CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner was entitled to 14 hours of subsidized Child Care per week.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 11th day of September, 2013

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\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 September 11, 2013.

Washburn County Department of Social Services  
Child Care Benefits