



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/150198

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 20, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Racine County Department of Human Services in regard to Child Care, a hearing was held on July 22, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner’s child care was correctly discontinued because income exceeded program income limits for a short period because of a short term increase in household income.

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: Kathy Christman  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner filed this appeal seeking backdate child care benefits for October 2012 through February 2013.

3. Petitioner's case was supposed to be reviewed in the fall of 2012. She was not, however, sent the review notice or forms. Because the review was not completed Petitioner's child care was discontinued in October 2012. It does not appear that she was sent a Notice of Decision advising her of that discontinuance. When the mistake was realized Petitioner was given a chance to complete the review in March 2013. She did so and requested backdating to October 2012. The case did not reopen, however, as income was determined to be in excess of Wisconsin Shares Child Care program income limits.
4. Petitioner's household size is 4; Petitioner, the father (KS) of one of her children and two children.
5. Petitioner and KS are both employed. Petitioner is paid bi-weekly. KS is paid weekly.
6. A considerable amount of income information was submitted by Petitioner for herself and KS. That information is included in the record as Exhibit #s 7 and 8. It makes apparent that Petitioner's wages increased in October 2012 to \$15.00 per hour and she was typically working a 40 hour week Thus her estimated monthly income would have been \$2580.00 (40 x \$15 x 4.3). KS was earning \$10 per hour and typically working a 40 hour week (there was some fluctuation because of less than 40 hours in some weeks and overtime in others). Thus his income would have been \$1720 (40 x \$10 x 4.3). Thus total income for October would have been \$4300.00. Fourth quarter 2012 wage records support this as they show income for Petitioner of \$7354.74 and \$7543.00 for KS. Petitioner's wage increase was not reported.

### DISCUSSION

There is an income test for child care eligibility, both at application and for ongoing eligibility. To obtain eligibility it must be below 185% of the FPL. To maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §1.6.3. As Petitioner's case was ongoing it is the 200% of the Federal Poverty Level (FPL) test that is to be applied. 200% of the FPL for a group of 4 was \$3842.00 from February 2012 through February 2013. *See Operations Memo 12-06, issued and effective February 1, 2012*. The FPL changed in early 2013. The effective dates of the new income limits for Wisconsin Shares eligibility is February 1, 2013 for new applicants and March 1, 2013 for ongoing program participants and 200% of the FPL became \$3925.00. *See Operations Memo 13-04 issued and effective February 27, 2013. 13-04, 2/27/13*.

Three program requirements are involved here. For purposes of the child care program income is calculated prospectively by making the best estimate of income based upon information available. A multiplier of 4.3 weeks per month is used to arrive at an average monthly income. *Wisconsin Shares Child Care Assistance Manual*, §1.6.6. Further, there are change reporting requirements:

#### **1.15.0 On Going Eligibility**

##### **1.15.1 Reporting Requirements**

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

##### **1.15.2 Examples of Required Information to be Reported**

Examples of some of the information that parents are required to report include:

A change in the scheduled approved activity hours

A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

Finally, if income fluctuates an averaged is used. *Manual*, §1.6.7.

The local agency did consult with Shares program management to see how it should handle the situation here where a review was not completed through no fault of Petitioner. It was concluded that had the wages for October 2012 been reported as required Shares eligibility would have ended. Thus to go back and provide benefits because of a lack of a review would then generate an overpayment. I cannot disagree with that rationale. Income was clearly over the 200% of the Federal Poverty Level amount of \$3842.00 that was applicable in October 2012. And, it was not reported.

Petitioner maintains that she was unaware benefits had been discontinued until the provider informed her in February 2013 and that had she known that benefits were discontinued she would have made other child care arrangements. This something of an equitable estoppel argument – because she was not notified of the review and case closure she could not make other arrangements, in essence, that the county agency’s inactions here misled her to her detriment, and that the Division of Hearings and Appeals should issue an order making her whole by ordering the agency to make payment for child care for the time involved. The Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977)*. The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform “equity” in the manner sought.

### **CONCLUSIONS OF LAW**

That Petitioner was over Shares program income limits beginning in October 2012 and was not, therefore, eligible for Share benefits.

**THEREFORE, it is**

**ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 1st day of October, 2013

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\sDavid D. Fleming  
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 October 1, 2013.

Racine County Department of Human Services  
Child Care Benefits