



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/150654

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 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 August 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner’s Child Care assistance application based upon income in excess of program limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner completed an application for Child Care on June 12, 2013. Exhibit 4.
3. Petitioner’s Child Care application was denied by the respondent on June 28, 2013, due to household income exceeding the Child Care program limits. Exhibit 5.

4. The respondent correctly attributed \$2,580.00 in gross monthly income to petitioner, which exceeds the Child Care gross income limit of \$2,391.00 for a household of two by \$189.00.
5. Petitioner timely filed a request for hearing on the denial of her Child Care application. Exhibit 1.

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 Care Manual* that provides the specific policies for the program.

To qualify for Childcare Assistance (CC), a parent or “person acting in the place of a parent” must have low income. Wis. Stat. §49.155(1)(c), & (1m). Specifically, new applicants cannot have income exceeding 185% of the Federal Poverty Level (FPL) and ongoing recipients cannot have income exceeding 200% FPL. *Child Care Manual (Manual)*, Ch. 1, §§1.6.2 - 1.6.3.

The available gross income of all household members is considered unless specifically excluded by the CC program rules or policy. *Id.*, 1.6.11. The *Manual* goes on to list types of income that are excluded, such as child support received for a child in the household, at §1.6.11. “In-kind” income, such as free housing in exchange for work, is also disregarded under CC program policy. *Id.* These provisions are viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

The petitioner questions the correctness of her CC income eligibility determination made in June, 2013. The petitioner’s income type and amount are not in dispute. The petitioner specifically challenged the agency’s use of her gross, rather than net, income, and she submitted further information regarding her household’s monthly budget. See, Exhibit 2. As noted above, the policy manual directs the county agency to use gross income and to apply a 185% FPL income limit for new cases. The legal support for this requirement is found in the state statute:

(1m) ELIGIBILITY. ...

(c) Except as provided in subds. 1g [foster parent] ...the *gross income* of the individual’s family is at or below 185% of the poverty line for a family the size of the individual’s family or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual’s family is at or below 200% of the poverty line for a family the size of the individual’s family. In calculating the gross income of the family, the Wisconsin works agency shall include income described under s. 49.145(3)(b)1 and 3, except that, in calculating farm and self-employment income ...

Wis. Stat. §49.155(1m)(c) (*emphasis added*).

As found above, the petitioner has gross household income of \$2,580.00. For a household of two, 185% of the FPL was 2,391.00. See, <http://dcf.wi.gov/childcare/wishares/eligibility.htm>. The petitioner’s household income exceeded this amount, so denial of her application was correct.

The petitioner has in effect argued that the use of gross income, as opposed to net income, is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department’s assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law,

she is not eligible; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

1. The county agency correctly considered the petitioner's gross income in determining her eligibility for CC benefits.
2. The county agency correctly denied the petitioner's CC application due to excess household income.

NOW, THEREFORE, it is ORDERED

That the petition for review 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 Health Services. 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: 1 West Wilson Street, 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 1st day of November, 2013

\sPeter McCombs
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 November 1, 2013.

Milwaukee Enrollment Services
Child Care Benefits