



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/150951

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 26, 2013, under Wis. Admin. Code, §HA 3.03(4), to review a decision by the Rock County Dept. of Social Services to deny child care assistance, a hearing was held on September 4, 2013, by telephone.

The issue for determination is whether petitioner is eligible for child care when she does not work outside the home and its farm.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Tina Henthorn  
Rock County Dept. of Social Services  
P.O. Box 1649  
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for child care on May 9, 2013. She recently had been given custody of four grandchildren by a children's court. She began to receive Kinship Care for the children in June, 2013.

3. Petitioner's husband has a full-time job. Petitioner does not work except for on the family farm. The farm is totally in her husband's name. In 2012 he showed a net loss even after depreciation was added back in.
4. By a notice dated May 22, 2013, the county denied child care assistance.

### DISCUSSION

I note initially that petitioner's appeal of the May 22, 2013 denial is untimely. An appeal of a child care denial must be filed within 45 days of the denial. Wis. Admin. Code, §HA 3.05(3). The notice stated correctly that an appeal had to be filed by July 8, 2013, and petitioner filed this appeal on July 26. Nevertheless, I will include the following so that the rules for petitioner are clear.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

Day care policy provides special treatment for Kinship Care caretakers if the placement is court ordered. Specifically, the income of the parents, rather than the income of the caretakers, is used to determine financial eligibility. See Wisconsin Shares Child Care Assistance Manual, Chapter 1, §1.13.3. However, the caretakers still must meet the requirement that the caretakers be taking part in an approved activity to be eligible for child care. Manual, §1.13.10.

To be considered working in an approved activity, a caretaker must either be employed by an employer with a Federal Employer Identification number, or be self-employed. Manual, §1.5.3. The county did not consider petitioner to be self-employed because the farm is totally in her husband's name. Thus petitioner has no outside or self-employment. Even if I were to accept that petitioner is a partner in her husband's farm, which is a reasonable assumption for a farm, she still would not be eligible for child care. A child care authorization for a self-employed person can be only for time that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage. Manual, §3.6.1.2. In this case the farm produced negative income in 2012, even after depreciation was added back in. See Manual, §1.6.15; for self-employment use the prior year's tax return unless past circumstances do not reflect the current situation. Thus any time petitioner spent working on the farm could not be authorized because it is not producing income equivalent to the minimum wage.

### CONCLUSIONS OF LAW

Petitioner's appeal of a child care denial was untimely.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 10th day of September, 2013

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\sBrian C. Schneider  
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 September 10, 2013.

Rock County Department of Social Services  
Child Care Benefits