



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/151970

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 9, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care benefits (CC), a hearing was held on October 15, 2013, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner’s CC application, for the failure of the parents to be in an “approved activity.”

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Interpreter: Ms. [REDACTED]

[REDACTED]  
By: [REDACTED], mother  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703  
By: Jalex Lor, ES Spec.  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently living in Dane County.

2. The petitioner and her husband, A. [REDACTED], have a child-in-common, [REDACTED] [REDACTED], who is under age one.
3. The petitioner's parents applied for CC on August 19, 2013. Following an interview and verification that the household receives no income from a job, the agency issued written notice of denial of that application on August 30, 2013. The basis for denial was that the parents were not in an "approved activity."
4. Mr. [REDACTED] takes courses to improve his English, as a prerequisite to beginning work on a PhD in political science from the University of Wisconsin-[REDACTED]. He does not have paid employment. As a non-citizen, he is not eligible to participate in the FSET or W2 government work programs, and he asserts that his student visa does not allow him to work. Thus, he was not engaged in employment for at least five hours weekly during the application period. There is no assertion that any household member is disabled.
5. The petitioner's mother is a full-time student at UW-[REDACTED], and aspires to be a physician. Her scholarship from Libya requires that she carry a full-time load. She is not a U.S. citizen, and was not engaged in employment for at least five hours weekly during the application period.

## DISCUSSION

### I. JURISDICTION.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Persons wishing to contest CC decisions receive a hearing from the Division of Hearings & Appeals, which is what occurred here. *Child Day Care Manual*, §2.1.5.3. This policy provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

### II. A PARENT MUST BE IN AN APPROVED ACTIVITY.

The agency asserted that the household was ineligible for childcare benefits because it believed the petitioner's parents are not engaged in a CC program "approved activity," and that therefore one of them could have chosen to make her/himself available to provide child care for their child. The pertinent administrative code rules are as follows:

**(27)** "Parent" means either a biological parent, a person who has consented to the artificial insemination of his wife under s. 891.40, Stats., or a parent by adoption.

Wis. Admin. Code §DCF 101.03(27). The rule goes on to provide this guidance for two-parent households:

**(1)** In two-parent families, both parents shall meet the eligibility criteria of s. 49.155 (1m), Stats., unless the agency that determines child care eligibility verifies that one parent has a disability or health condition that makes that parent unable to participate in activities under s. 49.155 (1m) (a), Stats., *and* is unable to provide the child care necessary for the other parent to participate in activities under s. 49.155 (1m) (a), Stats.

*Id.*, § 101.26.

The "eligibility criteria" of § 49.155 (the child care subsidy statute) include the requirement that each parent participate in one of the enumerated approved activities:

**(1m) ELIGIBILITY.** Except as provided in s. 49.155 (3g), ... an individual may receive a subsidy for child care for a child who has not attained the age of 13 or, if the child is disabled, who has not attained the age of 19, if the individual meets all of the following conditions:

**(a)** The individual is a parent of a child who meets the requirement under s. 49.145 (2) (c) and who is under the age of 13 ... and child care services for that child are needed in order for the individual to do any of the following:

**1.** ...[go to high school, get a high school diploma, work in a paying unsubsidized job, work in a Wisconsin Works position, obtain English literacy education]

**5.** Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

...

Wis. Stat. § 49.155(1m).

I will assume for the sake of argument that the infant's father is obtaining English literacy education. The only potential category above that would confer eligibility through the petitioner's mother is the fifth one – participation in educational courses that provide an employment skill, *as determined by the department*.

The Department's determination criteria are found in the *Child Care Manual (Manual)* at § 1.5.7:

#### **1.5.7 Technical College or Course of Study Producing Employment**

Participate in a course of study at a technical college or participate in a course of study that would produce an employment skill as determined by the department if the county Human Services or other agency or its subcontracted eligibility determination agency determines that the course or courses would facilitate the individual to maintain employment.

A school and work schedule is required for all participants.

The applicant/child care authorizing agency must determine that the education will provide an employment skill that facilitates the employed individual's efforts to maintain their current position or enhance employment in the same or another profession.

...

Apprenticeships are an allowable approved activity for Wisconsin Shares child care assistance. The apprenticeship may be paid or unpaid. Apprenticeships are exempt from the five hour per week work requirement.

Except for persons in apprenticeships, the individual is employed at least five (5) hours per week or 20 hours per month at the time the authorization for school begins and continues to be employed at least five (5) hours per week or 20 hours per month throughout the semester. A child care administrative agency may have a policy that exceeds 20 hours per month if the policy is in writing is applied to all parents and is and made available to the parent.

The employment meets the Wisconsin Shares child care assistance definitions of unsubsidized employment, or

The employment is a work study position, or

The employment is directly related to the individual's school and their participation in the employment while in school produces a measurable cash value such as: fellowships, working for room and board as a Resident Assistant in a dormitory or private apartment, teaching assistant positions for tuition credits, ...

Wisconsin Shares child care assistance for participating in education under this section is limited to no more than 24 months per lifetime of the parent. The 24 months need not be consecutive.

The petitioner's mother's situation does not fit the criteria created by the Department. Specifically, it is undisputed that she did not have paid employment of at least 20 hours monthly during the overpayment period. The household was therefore ineligible for CC.

### **CONCLUSIONS OF LAW**

1. The petitioner's household was ineligible for CC benefits due to a parent not being in an "approved activity" (college student status with 20 hours of paid employment monthly).

**THEREFORE, it is**

**ORDERED**

That the petition 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 6th day of November, 2013

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\sNancy J. Gagnon  
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 6, 2013.

Dane County Department of Human Services  
Child Care Benefits