



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/155517

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 11, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Marathon County Department of Social Services in regard to Child Care (CC) benefits, a hearing was held on March 25, 2014, at Wausau, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's CC benefits effective February 28, 2014.

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: Sherri Seubert, ES Lead Worker  
Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Prior to her July 2013 CC application, the petitioner was not employed or participating in other W2 activities, and was receiving Social Security benefits. Inexplicably, the petitioner received CC benefits for one child, beginning with 2013. That agency attempted to discontinue those

benefits on September 1, 2013, because the petitioner was not participating in an “approved” W2 activity (e.g., employment). The petitioner appealed, and during the hearing process, a physician verified that the petitioner was recovering from surgery and was unable to care for her child through October 2013. Administrative Law Judge Wolkstein issued a Decision that confirmed the agency’s decision to stipulate to reinstatement of CC benefits back to September 1, 2013, based on the physician information. *See*, DHA Decision CCB/152198 (Wis. Div. of Hearings & Appeals January 13, 2014)(DCF).

3. The Department of Children and Families asked the county agency to reconsider its position. On February 4, 2014, the agency issued written notice to the petitioner advising that her CC eligibility was ending effective February 28, 2014. *See*, Exhibit 2. The petitioner timely appealed, and aid has been continued pending issuance of a hearing decision.
4. The petitioner has never been employed from the time of her July 2013 application through the date of hearing.

### 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 program policies, at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>

The child care subsidy program’s authorizing statute contains financial and nonfinancial eligibility criteria. If an applicant parent does not meet the eligibility criteria, then CC cannot be granted. The agency asserts that the petitioner was not employed or participating in a W2 or other “approved activity” at the time of application. Because she was not so engaged, she was not eligible to begin receiving CC benefits. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

**(1m) ELIGIBILITY.** A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child 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. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
  - 1m. Obtain a high school diploma ...
  2. *Work in an unsubsidized job ...*
  3. *Work in a Wisconsin works employment position ...*
  - 3m. *Participate in a job search or work experience component of the food stamp ... program.*
  4. If the Wisconsin works agency determines that basic education would facilitate the individual’s efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
  5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

*[emphasis added]*

Wis. Stat. §49.155(1m)(a). The petitioner met none of the criteria at (a) *1 through 5* at application or thereafter.

The *Manual* is consistent with the above statute:

**1.4.8 Participation in Approved Activities**

Every parent in the family/Assistance Group (AG) must need child care to participate in an approved activity or activities(s) (see Approved Activities Section).

**1.4.8.1 Single Parent Participation in Approved Activities**

Single parents who are not able to participate in approved activities are not eligible for Wisconsin Shares child care subsidy unless they have been in an approved activity and receiving child care assistance and have been approved by the agency as meeting the department's criteria for holding a slot for a child.

*Manual*, §§ 1.4.8. – 1.4.8.1. See also, the *Manual* at § 3.8.10.

**3.8.10 Parent No Longer in an Approved Activity**

If reported within 10 days, manually end the authorization by counting ahead 10 calendar days, beginning with the current date and ending on the Saturday following the tenth day. CSAW will send the notice to the family and provider the Monday following the date that the authorization was changed. If the change was not reported timely, manually end the authorization the following Saturday.

The CC program is not meant to assist a disabled person with child care or respite care. It is meant to support persons who are working or preparing for imminent work. The petitioner is not working and has not been working for some time. She is not training for an imminent return to work. There is no justification for her continued receipt of CC benefits.

The petitioner stated that her four-year old child has a health impairment. The child's health impairment is irrelevant to the determination of whether the *petitioner* is eligible for CC benefits. The child's impairment is only relevant to the amount of the CC subsidy paid to the daycare provider, as the provider might be given a higher rate to care for a more demanding child. However, the amount of hourly payment to a provider is not relevant here, because the petitioner is not eligible for any amount of CC subsidy payments.

**CONCLUSIONS OF LAW**

1. The petitioner is not eligible for the CC program because she is not working or participating in an "approved activity."
2. The local agency correctly sought to discontinue the petitioner's CC eligibility effective February 28, 2014.

**THEREFORE, it is**

**ORDERED**

That the petition is DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 20th day of June, 2014

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, 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 June 20, 2014.

Marathon County Department of Social Services  
Child Care Benefits