



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/155625

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Pierce County Department of Human Services in regard to Child Care, a hearing was held on April 17, 2014, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner must cooperate with the child support agency to receive child care benefits.

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: Christina Tange

Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.
2. On February 5, 2014, the county agency denied the petitioner's assertion that she had good cause not to cooperate with child support in order to continue receiving child care benefits.

3. The father of the petitioner's child has at least three felony convictions, including strangulation and operating a motor vehicle while impaired as 5th and 6th offenses.
4. The father of the petitioner's child can reasonably be expected to cause physical or emotional harm to the petitioner or her child if she cooperates with child support by providing it with information about him.

DISCUSSION

The Wisconsin Shares Child Care program provides Child Care assistance to W-2 participants who participate in approved activities. Wis. Stat. § 49.155. Those participating in the program must make a good-faith effort to cooperate with the county child support agency to establish paternity and support payments, unless the person has good cause for not cooperating. Wis. Stat. § 49.22(2m); Wis. Admin. Code, § DCF 102.03. The W-2 agency ended the petitioner's child care benefits because it contends that she lacked good cause not to cooperate with the child support agency. She disagrees.

W-2 agencies must grant good cause if they determine that any of the following criteria found in Wis. Admin. Code, § DCF 102.05 apply:

- (1) Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of domestic abuse or child kidnapping.
- (2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.
- (3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.
- (4) The child was conceived as a result of incest or sexual assault.
- (5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.
- (6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

A person seeking a good cause exception to cooperating with child support must specify the circumstances she believes constitute good cause on a good cause form and affirm or swear to those circumstances under oath in the presence of a notary public. Wis. Admin. Code, § DCF 102.06(2). The W-2 worker "shall encourage the applicant or participant to submit as many types of corroborative evidence as possible" and advise her that if she needs help obtaining this evidence, the worker will help her. Wis. Admin. Code, § DCF 102.06(3). Acceptable corroborative evidence includes any of the following:

- (a) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records regarding domestic abuse or physical or emotional harm to the parent or child.
- (b) Medical records or written statements from a mental health professional that pertain to the emotional health history, present emotional health status, or prognosis of the parent or child.
- (c) Birth certificates, medical records, or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.
- (d) Court documents or other records that indicate that a petition for the adoption of the child has been filed with a court.
- (e) A written statement from a public or private social services agency that the parent is being assisted by the agency in deciding whether to terminate parental rights.

- (f) Written and signed statements from others with knowledge of the circumstances on which the good cause claim is based, including, but not limited to, statements from neighbors, friends, family, or clergy.
- (g) An identification by the screening process under s. DCF 101.15 as an individual or parent of a child who is or has been a victim of domestic abuse or is at risk of further domestic abuse and the alleged perpetrator is the other parent.
- (h) Any other supporting or corroborative evidence.

Wis. Admin. Code, § DCF 102.06(4)

The petitioner stated on her good cause form that she should not have to cooperate with child support because the father of her child is a “reckless, careless, irresponsible, violent, and no good person” who “will negatively influence me and my daughter.” She went on to state that he was constantly drunk, had been arrested numerous times for operating a motor vehicle while impaired (including once in her car), was arrested for domestic abuse of his former girlfriend, and had thrown chairs at walls in front of her and kept her from leaving. She contends that he was never around while she was pregnant and saw the child only once in the 16 months since birth. She submitted statements from persons who know him confirming that he is irresponsible and constantly drink and in and out of jail. The county agency denied her request because it contends she did not adequately document it.

I note initially that it does not appear that Pierce County’s good cause form complies with Wisconsin law because there is no provision for the declarant’s statement to be notarized. In addition it is unclear whether the agency offered the petitioner any assistance in corroborating her claim. Regardless of whether it offered help, corroboration was not difficult to find. Public records found in the state’s circuit court database, CCAP, indicate that in February of this year, he was convicted of three felonies, reckless endangering, operating a motor vehicle while impaired as a 6th offense, and bail jumping. <https://wcca.wicourts.gov/caseDetails.do?jsessionid=F72EB4068C5124B05ADEF980004614F0.render6?caseNo=2014CF000023&countyNo=47&cacheId=2EE69485FBB82CFCAA9C1BBBC701708C&recordCount=30&offset=3&mode=details&submit=View+Case+Details>. One year earlier, he was convicted of operating a motor vehicle while impaired as a 5th offense. In 2009 he was charged and later convicted of felony strangulation, misdemeanor intimidation of a witness, and disorderly conduct. <https://wcca.wicourts.gov/caseDetails.do?jsessionid=F72EB4068C5124B05ADEF980004614F0.render6?caseNo=2009CF000120&countyNo=47&cacheId=2EE69485FBB82CFCAA9C1BBBC701708C&recordCount=30&offset=25&mode=details&submit=View+Case+Details>.

The petitioner has established that the father of her child could cause emotional and physical harm to her and her child if she cooperates with child support. He has been convicted of strangling one woman, which corroborates the petitioner’s claim that he acts violently by doing things such as throwing chairs and preventing her from leaving. He also has been convicted of operating a motor vehicle while impaired six times. Looking at the charges that were dismissed when he pled guilty to his latest conviction, the last time he drank and drove he led police on a wild chase that resulted in at least one damaged vehicle. Moreover, it came only a year after his previous operating while impaired offense. These offenses corroborate the petitioner’s claim that he spends a large portion of his life intoxicated. That he gets behind a car wheel while intoxicated and leads police on a chase that could kill anyone in his path indicates that his behavior while impaired poses a real threat to others, including the petitioner and her child.

I note that as a practical matter, it does not appear that he will be able to pay child support any time soon because his prior felony convictions and the circumstances of his latest conviction mean that when he is sentenced it almost certainly will be to prison.

CONCLUSIONS OF LAW

The petitioner has good cause not to cooperate with the county child support agency.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the child care program retroactive to the date her eligibility ended.

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 5th day of May, 2014

\sMichael D. O'Brien
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 May 5, 2014.

Pierce County Department of Human Services
Child Care Benefits