



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/156513

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 2, 2014, under Wis. Admin. Code, §HA 3.03(4), to review a decision by Milwaukee Enrollment Services to deny child care assistance, a hearing was held on May 7, 2014, by telephone.

The issue for determination is petitioner can receive child care for months in which she was an independent contractor earning less than minimum wage.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Theresa Miles  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner requested child care assistance on January 27, 2014. The agency requested verification of petitioner's income and work hours, but the information that she provided was insufficient. On February 28 the agency denied the request.
3. Petitioner provided more information, and eventually, by a notice dated March 19, the agency found petitioner eligible for child care retroactive to February 1, 2014.

4. When the agency reviewed petitioner's hours for purposes of an authorization, it found that petitioner was employed as an independent contractor working on commission. The income from petitioner's employment averaged out to less than minimum wage, so no authorization was done.
5. Eventually petitioner's status was changed to employee with an hourly wage beginning March 31, 2014. An authorization for 35 hours per week child care began as of Sunday, March 30.

### **DISCUSSION**

Petitioner filed this appeal seeking retroactive child care assistance for the months of February and March, 2014. She testified that although she was working full time, her income from the new job did not add up sufficiently to meet the minimum wage requirement.

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. The Wisconsin Shares Child Care Assistance Manual (hereafter "the Manual") provides as follows concerning self-employed applicants/recipients at §3.6.1.2:

During the first 6 months that a parent is engaged in a new self-employment business, the agency may authorize care for the hours the parent is engaged in self-employment work.... A parent may not use this section more than once every 24 months.

Authorizations for self-employment are only allowed to the extent that they support employment that produces monthly-adjusted self-employment income equivalent to at least the state minimum wage.

The Department has chosen to limit child care authorizations for self-employed parents to the hours obtained by dividing net self-employment income by the minimum wage. It allows full-time child care for up to six months after the person starts a new self-employment business, no doubt to allow the business time to grow to determine whether it can be capable of bringing in sufficient net income.

In this case I find that the agency erred by denying an authorization for February and March, 2014. Although petitioner did not earn sufficient income to meet the minimum wage requirement, she should have been given the one-time six-month allowance. I looked at case notes back to the beginning of 2012 and found nothing that indicated a previous child care authorization for self-employment.

### **CONCLUSIONS OF LAW**

The agency erred by refusing to authorize child care assistance for petitioner's new self-employment due to lack of income, because a newly self-employed parent can get full-time child care for six months after the start of the self-employment.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to authorize petitioner's full-time child care for the period February 1 through March 29, 2014, at the provider utilized by petitioner during the period if the provider qualified for Wisconsin Shares payments. The agency shall take this action within 10 days of this decision.

## 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 12th day of May, 2014

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\sBrian C. Schneider  
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 12, 2014.

Milwaukee Enrollment Services  
Child Care Benefits