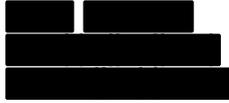




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCB/158647

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2014, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Barron County Department of Human Services in regard to Child Care, a hearing was held on August 19, 2014, at Barron, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner is ineligible for child care benefits because her husband is not participating in an approved activity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Candi Gillette

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Barron County.
2. The petitioner is married. Her husband is the father of her children and lives with them.

3. The county child protective service agency has barred the petitioner's husband from having unsupervised contact with his children since May 2014. This position became part of an order by the Barron county circuit court on August 12, 2014.
4. The county agency denied child care benefits to the petitioner because her husband is not engaged in an approved activity.

DISCUSSION

Child care benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, in an approved technical school program, or, if under 20, in high school. Wis. Stat. § 49.155(1m)(a). If the household includes two parents, both must participate in an approved activity unless one parent is participating in an approved activity and the other cannot participate in such an activity and cannot care for children because a disability or other health problem prevents him from doing so. *Day Care Manual*, § 1.4.8.2

The petitioner is married and living with her children and husband. She participates in an approved activity, but he does not. He is not disabled. Nevertheless, the petitioner seeks child care benefits because the county child protection agency, in an action since made into an order by the Barron county circuit court, has barred him from seeing his children without supervision. As a practical matter, this means that as long as he is in the house, the petitioner requires child care to work outside of it. This puts her in the same position as someone whose husband cannot care for children because of a disability. Although she is in the same practical position as one whose husband is disabled, the law does not recognize her situation as an exception to the general rule that both parents must participate in an approved activity to qualify for child care benefits. Administrative law judges cannot issue orders that go beyond the four corners of the law. Because it is not a disability or other physical problem that prevents the petitioner's husband from caring for his children, child care law requires me to uphold the agency's decision to deny the petitioner's request for benefits.

I note that nothing in the record indicates that the petitioner's husband cannot work. Thus, if he found employment, the petitioner would probably qualify for benefits. In addition, as mentioned during the hearing, when he begins serving a jail sentence this fall, she will be eligible as long as she continues to hold a job.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner is ineligible for child care benefits because her husband is not engaged in an approved activity.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 August, 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 August 20, 2014.

Barron County Department of Human Services
Child Care Benefits