



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CCB/158746

PRELIMINARY RECITALS

Pursuant to a petition filed July 2, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Juneau County Department of Human Services in regard to Child Care (CC), a hearing was held on October 8, 2014, at Mauston, Wisconsin. A hearing set for September 9, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the agency has authorized the correct number of CC hours for the petitioner, who has placement of his children on a shared basis with their mother.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, ES Spec.
Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Juneau County.

2. The petitioner is an ongoing recipient of CC benefits. On May 29, 2014, a circuit court judge (family court) signed off on a stipulation between the petitioner and the mother of his three children, Rec Redact. The Stipulation declares that the petitioner and Redact share joint legal custody of the three minor children. It also declares that they equally share physical placement of the children on an alternating week-to-week basis. *See*, Exhibit 1. Finally, the Stipulation contains this language:
 

The parties agree to a right of first refusal, whereby if either party is not available to provide care for the children overnight, they shall notify the other party and the other party shall have the right to take the children for that period of time. If the other party is not able to provide care, either, the parent with placement may then seek alternate childcare arrangements.
3. Due to his status as an employed person, the petitioner receives benefits for placement of one minor child (three children in the summer) with a licensed daycare provider. On May 27, 2014, the agency created an attendance-based CC authorization for the petitioner's three-year old child at the level of 25 hours weekly, every other week, running to December 2014. On June 2, 2014, the agency notified the petitioner that he was authorized for up to 25 hours weekly of attendance-based CC bi-weekly, for each of the two older children (LP, LE), from June 8 through August 30, 2014. The summer hours were later increased for all three children, per notice dated June 30, 2014. On September 8, 2014, the agency issued written notice to the petitioner that an attendance-based authorization for the three-year old (ME) was in place for the September 7 through December 6, 2014 period, for 23 hours weekly on the "petitioner's week," at a new provider.
4. Redact has not enrolled in the CC program.

### 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*, Wis. Admin. Code § DCF 101.26 and ch. 201. The department has a *Child Day Care Manual (Manual)* that provides the specific policies for the program. (viewed at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> in January 2015). The *Manual*, §1.5.0, states that a recipient must be engaged in one of eight enumerated activities in order to be authorized for childcare benefits. There is no dispute that the petitioner was engaged in the qualifying activity of unsubsidized employment at all times relevant here.

The state legal authorities (the statute -- § 49.155 -- and the two code chapters) are not sufficiently detailed to answer the question related to an authorization posed in this case. Department policy directs the agency to create an attendance-based authorization for the placement/residence weeks. The agency did so, which resulted in the decision to create an attendance-based authorization only for the alternating weeks when the petitioner had physical placement of his children. The petitioner desires a childcare authorization that includes days on his "off" weeks when Redact declares that she cannot care for the children and he takes them in.

The *Manual* states that, in shared placement cases with one parent on CC assistance, the authorization should be attendance-based and for time when the child "resides" with that parent:

#### **1.9.0 Shared Placement Cases**

Each parent in a shared placement case may apply for Wisconsin Shares child care assistance for the time that the child in common is residing with him or her while they are participating in an approved activity. Each parent will have their own case number but the child will be assigned a unique PIN number that will be used in both cases. The child

care payment system is designed to allow a child to be included in two separate Assistance Groups for this situation.

*Manual*, § 1.9.0; *see also* § 3.9.2.

The petitioner's children are visiting him on [Redact]'s week, not residing with him. Therefore, payment for childcare on [Redact]'s week appears to be [Redact]'s responsibility, or whatever arrangement [Redact] and the petitioner make between them. A CC subsidy payment for [Redact]'s time is not appropriate.

### CONCLUSIONS OF LAW

1. The county agency correctly declined to authorize CC payments for the petitioner's children for the weeks for which they are legally placed with their mother.

**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 29th day of January, 2015

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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 January 29, 2015.

Juneau County Department of Human Services  
Child Care Benefits