



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

CCB/161144

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the La Crosse County Department of Human Services in regard to Child Care, a hearing was held on January 05, 2015, at La Crosse, Wisconsin.

The issue for determination is whether the agency correctly denied child care program enrollment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County.
2. Petitioner applied for CC on 8/29/14.
3. Petitioner does not live with his ex-wife who is the mother of the children. The mother has the children on her MA and FS cases. The mother is not seeking CC enrollment.

4. Verification documents were sought by notice to petitioner on 9/12/14 and due to the agency by 9/29/14.
5. The agency received some of the requested documentation.
6. The agency denied a CC authorization because it was unable to verify the number of hours petitioner has the children in his custody.
7. The agency denied CC by notice dated 9/30/14.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0.

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Under the rules of the CC program, in shared custody cases a parent may receive the CC subsidy only during the times that parent has custody of the child.

In this case, the agency denied CC to petitioner because it did not feel it had adequately verified the accuracy of the petitioner's claim that the children lived with him Sunday through Friday, and not the mother. The agency informed petitioner that he could provide a letter from the mother, but petitioner informs that the mother is not cooperative. The agency simply argues that it needs *something* to corroborate the claim of petitioner. The agency even stated that a statement from the child care provider would be acceptable if it indicated that petitioner is the one who drops and picks up. Such an expectation seems reasonable.

Petitioner has moved in the circuit court to revise the court order for placement. Petitioner states that the motion was granted and he now has primary placement. Petitioner provided the order from the circuit court (ex. #4) confirming this. The order purports to conform the order to the actual placement with the mother having placement from 4pm Fridays to 4pm on Sundays. Petitioner also provided cancelled checks and bills from [REDACTED]. I find this new documentation, previously not provided to the agency, to be sufficient verification to support the Child Care authorization for the times petitioner has placement.

CONCLUSIONS OF LAW

The petitioner has now provided sufficient verification for the agency to grant the authorizations if all other program requirements are met.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that, if all other program requirements are met, to grant the CC authorizations consistent with the placement ordered in Trempeleau Co. Case No. 14-FA-92 indicating placement of the children with petitioner at all times other than 4pm Friday to 4pm Sunday. These actions shall be completed within 10 days.

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 25th day of February, 2015

\sJohn P. Tedesco
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 February 25, 2015.

La Crosse County Department of Human Services
Child Care Benefits