



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTS/161753

PRELIMINARY RECITALS

Pursuant to a petition filed November 03, 2014, under Wis. Stat. § 227.42, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on December 04, 2014, at Racine, Wisconsin.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly ended the Petitioner's caretaker supplement benefits effective October 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rhonda Kramer, Lead Economic Support Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner's daughter's turned 19 in September 2014. (Exhibit 3; Testimony of Petitioner)

3. On September 2, 2014, the agency sent the Petitioner a notice indicating that her Caretaker Supplement Benefits would be ending as of October 1, 2014, because she was no longer caring for minors. (Exhibit 5)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 3, 2014. (Exhibit 1)

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, under Wis. Stat., §49.775. The program currently pays SSI recipient parents \$250 per month for one child and \$150 per month for each additional child. Wis. Stat., §49.775(4) See also SSI Eligibility Handbook Sec. 4.1.7

To be eligible for the CTS payments the following criteria must be met: (1) the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; (2) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (3) the child or children must not receive SSI payments themselves. Wis. Stat. §49.775(2)(a), (b) and (c); CTS Handbook, Appendix 1.1.

In order for a child to meet the non-financial criteria, s/he must be a dependent of the custodial parent. *Wis. Stat., §49.775(2)* Per Wis. Stat., §49.775 (1)(b), "Dependent child" has the meaning given in s. 49.141 (1) (c), which states:

"Dependent child" means a person who resides with a parent and who is under the age of 18 or, if the person is a full-time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19.

This statutory scheme is reflected in the CTS Handbook at §3.1.11.

The children in question are no longer under the age of 19. They reached the age of 19 in September 2014. Consequently, they are no longer considered the Petitioner's dependent children for purposes of determining caretaker supplement eligibility. The agency correctly ended the Petitioner's caretaker supplement benefits, effective October 1, 2014.

Petitioner argues that the rules should not apply to her case and that she should receive caretaker supplement benefits until her daughters graduate from high school, because an agency worker told her that she would receive such benefits. However, this is an equitable argument, i.e. an argument about what a party thinks might be fair, and the Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. 540, 545 (E.D. Wis. 1977)*. It must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Applied here, the Division of Hearings and Appeals must follow the regulatory scheme just outlined. That regulation and policy prohibits the payment requested here.

CONCLUSIONS OF LAW

The agency correctly terminated the Petitioner's caretaker supplement benefits, effective October 1, 2014.

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 Health Services, 1 West Wilson Street, Room 651, 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 Milwaukee,
Wisconsin, this 10th day of February, 2015.

\sMayumi M. Ishii
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 10, 2015.

Racine County Department of Human Services
Division of Health Care Access and Accountability