



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

CCB/161858

PRELIMINARY RECITALS

Pursuant to a petition filed November 11, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Eau Claire County Department of Human Services in regard to Child Care, a hearing was held on December 16, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner can receive Child Care benefits on behalf of her niece if she is not the child's guardian or receiving Kinship Care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted]

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Eau Claire County.
2. The petitioner's income exceeds 185% of the federal poverty level.

3. The petitioner cares for her niece. She is not the child's guardian and does not receive Kinship Care benefits on her behalf.
4. The county agency denied the petitioner's application for Child Care benefits because her income exceeds the program's limit.

DISCUSSION

The petitioner seeks Child Care benefits to help her care for six-month-old niece whose mother cannot care for. The county agency denied those benefits because the petitioner's income exceeds the program's limit.

The income limit for new applicants to the program is usually 185% of the federal poverty level and based upon the income of the household in which the child lives. Wis. Stat. § 49.155(1m)(c)1. But if those caring for the child are doing so under a court order and receiving Kinship Care benefits under Wis. Stat. § 48.57, the income limit is 200% of the federal poverty level and based child's parent's income Wis. Stat. § 49.155(1m)(c)1h. (Kinship Care pays \$220 per month per child to a qualified relative who cares for a child he bears no legal responsibility to support Wis. Admin. Code, § 58.03(12).)

The petitioner concedes that her income exceeds 185% of the federal poverty level and that she does not have guardianship over or receive Kinship Care on behalf of her niece. But she disagrees with distinguishing those who have guardianship and receive Kinship Care from those in her situation, pointing out that her costs are the same either way. While her argument is logical, it is not the law. Because I have no authority to ignore the law, I must uphold the agency's decision.

CONCLUSIONS OF LAW

1. The county agency correctly based the petitioner's child care benefits on her own income.
2. The county agency correctly denied Child Care benefits to the petitioner because her income exceeds 185% of the federal poverty level.

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 28th day of January, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 28, 2015.

Eau Claire County Department of Human Services
Child Care Benefits