



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

CCB/162216

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Admin. Code, §HA 3.03(4), to review a decision by Waushara County Human Services to discontinue child care assistance, a hearing was held on January 22, 2015, by telephone.

The issue for determination is whether petitioner and her husband are ineligible for child care because both work in a sheltered workshop.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Vanessa A. Kuettel
Legal Action of Wisconsin, Inc.
404 N. Main St., Suite 702
Oshkosh, WI 54901

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Stacy Engel
Waushara County Human Services
P.O. Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waushara County.
2. Petitioner and her husband have a one-year-old son. Both parents work at [redacted], a sheltered workshop, and they received child care assistance through the Wisconsin Shares program until the action at issue in this case.

3. In October, 2014, petitioner's county worker was informed during a state training session that employment at a sheltered workshop is considered an activity eligible for child care only if the child's parent is the sole caretaker. Because both parents are in the household petitioner's sheltered workshop is not a qualifying activity.
4. By a notice dated October 17, 2014, the county informed petitioner that child care assistance would end October 31, 2014 because the caretakers were not in an approved activity. A second notice dated October 20 ended the current authorization as of October 25, 2014.

### **DISCUSSION**

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Wisconsin Shares Child Care Assistance Manual, Part 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

Wis. Stat., §49.155(1m)(2) provides that a parent can receive a child care subsidy for a child under age 13 in order for the parent to do any of a number of qualifying activities, including "2. Work in an unsubsidized job." "Unsubsidized employment" is defined in the Wis. Admin. Code, §DCF 101.03(35) to mean "employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities."

The Child Care Manual mentions sheltered employment in the list of activities found at part 1.5.0. §1.5.3.4 provides: "Employment at a sheltered workshop licensed under s. 104.07(2), Wis. Stats, is considered unsubsidized employment and an allowable activity if the parent is the sole caretaker of a dependent child in need of child care to allow the parent to be employed."

Petitioner argues that the provision limiting sheltered workshop activities to just one parent has no basis in the law. Indeed, neither the statute nor the administrative code differentiates sheltered workshops from other types of unsubsidized employment. Therefore, in this case, both parents were working in unsubsidized employment, and both thus are in a qualifying activity as defined by the code.

To limit eligibility based upon a sheltered workshop to only one parent makes no sense legally or practically. If both parents, due to disability or other limitation, qualify for a sheltered workshop, I fail to see how the situation is any different than if a single parent qualifies for a sheltered workshop. My suspicion is that §1.5.3.4 was written into the policy simply to make clear to economic support workers that sheltered workshops can be considered qualifying unsubsidized employment activities.

I conclude that the policy provision allowing a sheltered workshop to be a qualifying activity only if the worker is a sole caretaker is in conflict with the state law that puts no such restriction on the activity. Therefore the discontinuance of child care assistance was incorrect, and the county should restore eligibility as it existed prior to the October 17, 2014 notice.

### **CONCLUSIONS OF LAW**

The discontinuance of child care in this case was incorrect because both parents were working in unsubsidized sheltered workshop employment, and the policy limiting eligibility to only sole caretakers in sheltered workshops is in conflict with the Wisconsin Administrative Code definition of unsubsidized employment.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to restore petitioner's child care eligibility based upon her and her husband's work in a sheltered workshop, if they otherwise remain eligible for child care. The county shall do so within 10 days of the final decision in this case.

**NOTICE TO RECIPIENTS OF THIS DECISION:**

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of March, 2015

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\sBrian C. Schneider  
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 March 5, 2015.

Waushara County Human Services  
Child Care Benefits  
Attorney Vanessa Kuettel