FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCB/163817

PRELIMINARY RECITALS

Pursuant to a petition filed February 9, 2015, under Wis. Admin. Code, §HA 3.03(4), to review a decision by the Rock County Dept. of Social Services to discontinue child care assistance, a hearing was held on March 25, 2015, by telephone.

The issue for determination is whether the agency correctly determined petitioner's fiscal test group for child care eligibility.

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Atty. Hal Menendez
Legal Action of Wisconsin, Inc.
31 South Mills Street
Madison, WI 53715

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Maria Delgado; also Atty. Jeff Kuglisch, Corp. Counsel
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Rock County.

2. Petitioner applied for child care on December 2, 2014. She reported living her boyfriend L.L. and their daughter K.C.L., who is the intended child care recipient. Also listed in the household are L.L.'s 11-year-old twin children from a former marriage, K.E.L. and K.M.L. L.L. has joint legal custody of the twins, and he shares placement on a 50-50 basis. He claims one of the children as a dependent for tax purposes, and his wife claims the other, pursuant to the divorce judgment.

3. When the case was being processed the caretaker supplement benefits that the twins' mother receives for them was being counted as income to petitioner's household because the computer system ascribes the income to the children. Petitioner asked that the twins be taken off the application (the twins already receive Medical Assistance and Food Share on their mother's case, and they do not require child care). See Exhibit 4, 12/16/2014 case note.

4. After a period obtaining complete income information, the county determined that the household was eligible for child care for the period beginning December 7, 2014, based upon a three-person assistance group.

5. In January, 2015, the county obtained additional information about L.L.'s commissions from his new job. When the additional income was added, the household was over the child care income limit for a three-person household. By a notice dated February 9, 2015, the county informed petitioner that child care eligibility would end March 1, 2015 because gross household income of $3,394.05 was higher than the income limit of $3,348. Exhibit 1; see also Exhibit 2. The county later updated the monthly household income to be $3,644.05. See Exhibit 3.

6. Benefits were continued pending the decision. See Exhibit 11.

DISCUSSION

Parents are eligible for child care services if they need 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. The agency must utilize gross income, and for an ongoing case, the income limit is 200% of the federal poverty limit. Wis. Stat., §49.155(1m)(c); Child Care Manual, Chapter 1, §§1.6.3 and 1.6.4. 200% of poverty for a three-person household is $3,348 monthly. DECE Operations Memo no. 15-08, dated March 3, 2015, which was effective as of February 1, 2015. In the same memo, it is noted that 200% of poverty for a four-person household is $4,042, and for a five-person household is $4,735.

The monthly income is not at issue. Petitioner accepts the final figure of $3,644.05. That amount is higher than the income limit for a three-person household, but lower than the limits for both four and five person households. Petitioner argues that the household should be considered five members. An e-mail exchange between Departmental policy representatives suggests that the household should be considered four members, with the twin who is the mother's tax dependent excluded.

The Child Care Manual, §1.2.0 defines "Assistance Group" as follows: "The Child Care Assistance Group (AG) consists of the individuals in the household who belong in the same case (see Family Group Definition for specific details." "Family or Family Group" is defined in the same section as

> an individual who is a custodial parent or placement parent and their dependent children and all dependent children with respect to whom the individual's dependent child is a custodial parent. Family or Family Group includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.

See also §1.3.8, which describes "assistance groups" more thoroughly. Importantly, that section describes a custodial parent as a parent who resides with a child and has legal custody of the child. §1.3.9 further describes assistance group composition to include a custodial or placement parents and "all of their dependent children."

The clearest statement of the situation is found in the examples at §1.3.9. An example captioned "Shared Placement" is as follows:

> Jessica and Mathew have shared placement of Megan, age 11. Jessica has two other children living with her. Mathew lives with Betty and they have 1 child together.
>
> *Jessica's AG consists of herself, Megan, and Jessica's two other children.*
>
> *Mathew's AG consists of himself, Megan, Betty, and their one child in common.*

Italics in original. Thus the Manual clearly answers the question in this case. Petitioner lives with L.L. and a child-in-common. L.L. shares placement of the twins with his ex-wife. The assistance group thus should consist of petitioner, L.L., the child-in-common, and the twins. Under the example the twins also would be in their mother's assistance group.

Two computer issues cause the glitch. First, the computer has the twins' caretaker supplement follow them into petitioner's household. That needs to be overridden. L.L.'s ex-wife receives the caretaker supplement; under caretaker supplement rules L.L. is not eligible to receive it, and it is a computer fiction that the children receive the income. Second, the computer separates the twins by their tax dependent statuses. The tax dependent status is a BadgerCare Plus rule under the new "MAGI" budgeting system. There is no legal basis for utilizing that system for child care purposes. Again, the computer must be overridden.

I conclude that the discontinuance of child care was incorrect. Petitioner's assistance group for child care purposes consists of five people, and household income should be compared to the income limit for that group size.

CONCLUSIONS OF LAW

The county erred by comparing petitioner's household income to the monthly limit for a three-person assistance group; the correct group size is five, including the older children whose placement is shared between their parents.

THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's child care eligibility effective March 1, 2015 by classifying petitioner's household as five persons. The county shall take the action within 10 days of this decision.

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 31st day of March, 2015

\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 31, 2015.

Rock County Department of Social Services
Child Care Benefits
Attorney Hal Menendez