



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/164034

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Jackson County Department of Human Services in regard to Foster Care, a hearing was held on April 14, 2015, at Black River Falls, Wisconsin.

The issue for determination is whether the agency erred in the termination of the foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED] Corporation Counsel
Jackson County Department of Human Services
420 Hwy 54 West
Po Box 457
Black River Falls, WI 54615

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Jackson County.
2. Petitioner has a grandchild that he was interested in fostering. For this reason, petitioner applied for, and was granted, a child-specific foster care license.

3. Ultimately, the child was not placed with petitioner. Instead, the child was placed with his biological parents.
4. The agency subsequently renewed the license for petitioner.
5. The agency realized that the renewal of the license was error as the Administrative Code calls for the license to become invalid six months after the child is placed elsewhere. When the agency realized this error, it issued a notice on February 4, 2015 informing petitioner that “your current foster care license is invalid...Jackson County Department of Health and Human Services will be unable to maintain your foster care license and it will be closed.”
6. Petitioner filed a request for hearing.

DISCUSSION

Wisconsin law provides for an administrative appeal in certain types of foster home license actions by a county agency:

48.72 Appeal procedure. Except as provided in s. 48.715 (6) and (7), any person aggrieved by the department's refusal or failure to issue, renew, or continue a license or by any action taken by the department under s. 48.715 [Sanctions and penalties] has the right to an administrative hearing provided for contested cases in ch. 227.

The Administrative Code similarly provides:

DCF 56.10 Hearing.

(1) APPEAL. An applicant for a license to operate a foster home who is denied a license or a licensee whose license is revoked or whose application for renewal of the license is denied may appeal the decision by asking for a hearing in accordance with ch. 227, Stats.

But, the action in this case was not a revocation. The Administrative Code provides that in the case of a child-specific foster home license, which this was, “A child-specific license may remain valid with any granted waivers or exceptions **for the duration of the licensing period or up to 6 months after the child returns home or is placed elsewhere, whichever occurs first.**” Wis. Admin. Code § 56.13(1)(b). There is no dispute that the child was placed back with the biological parents more than six months prior to the notice. It is unfortunate that the agency renewed the license after the expiration of the first term. That was a mistake and only served to complicate the issue. By law, the license became invalid six months after placement. It happened automatically, by operation of law. This is not a revocation action. I note that no appeal rights were provided on the February 4, 2015 notice. And, this notice did not suggest that it was a revocation. I find this was the correct procedure – to notify the petitioner that his license was no longer valid.

This was not a sanction or a penalty for which a petitioner would have appeal rights under Wis. Stat. 48.72. This was simply a notice that the license was no longer valid. Petitioner did nothing wrong and did not fall short of any qualifications. Given that, **the agency is incorrect for asserting that this process shall result in a two year ineligibility to apply for another license in the future**, as would be the case in a proper revocation action.

CONCLUSIONS OF LAW

1. There is not valid issue raised for a DHA appeal as this was not a revocation of a license, but, rather the license terminated by operation of law six months after the child was placed with his biological parents.
2. The county agency should not bar petitioner from future application for a foster home license as this was not a revocation action by the agency.

THEREFORE, it is**ORDERED**

That this matter is remanded to the agency with instructions to rescind any designation of this action in county records as a “revocation,” and to NOT bar petitioner from application for future foster home applications. These actions shall be completed within 10 days. In all other respects this 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, Room G200, 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 4th day of May, 2015

\sJohn P. Tedesco
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 May 4, 2015.

Jackson County Department of Human Services
DCF - Foster Care
Attorney [REDACTED]