



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

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In the Matter of

██████████  
██████████  
██████████

DECISION

FOS/██████████

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Wisconsin Department of Children and Families (Department or DCF) in regard to removal of a child from the petitioner’s foster home and denial of her adoption application, a hearing was held on July 21, 2015, at Madison, Wisconsin. The hearing record was held open through August 31, 2015, for submission of briefs. Both briefs were timely received.

The issues for determination are (1) whether the Department was correct to remove its ward, the child EO, from the petitioner’s foster home in February 2015, and (2) whether the Department was correct to deny the petitioner’s application to adopt EO.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

Petitioner's Representative:

Attorney Sandra Zenor  
420 3rd St. South  
P. O. Box 1267  
Wisconsin Rapids, WI 54495-1267

Respondent:

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

By: Atty. ██████████  
DCF Office of Legal Counsel

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an adult resident of Wood County.

2. The infant EO is the petitioner's nephew. In March 2014, EO was admitted to a hospital with skull and rib fractures after being dropped by his father, [REDACTED]. Wood County investigated and concluded that [REDACTED] was "substantiated" for physical abuse of EO. After brief stays in the hospital and a temporary foster home, EO was placed with the petitioner. Prior to the placements, Wood County social worker [REDACTED] advised the petitioner of the abuse allegation against [REDACTED], and explained why EO was removed from his parent's care.
3. [REDACTED] also previously investigated a sexual abuse allegation of EO's half-sister by [REDACTED]. The result was a "substantiation" determination of said abuse, and the filing of two criminal charges of first degree sexual assault of a child against [REDACTED]. [REDACTED] fled Wisconsin, an arrest warrant was issued on June 27, 2014, and the charges remain pending to the present.
4. Another Wood County social worker, [REDACTED] monitored EO's foster placement with the petitioner for seven months. She and the petitioner attended several EO-related proceedings (*e.g.*, termination of [REDACTED]'s parental rights), wherein the allegations of physical abuse by [REDACTED] were discussed. [REDACTED] also discussed [REDACTED]'s physical and sexual abuse substantiations and pending criminal charges with the petitioner.
5. The petitioner's residence is safe and clean. It is owned by the absent father, [REDACTED]. The petitioner spent several thousand dollars of her own money to make improvement to the residence upon moving in, and currently pays the mortgage. She clearly loves EO, and has provided adequate physical care, including obtaining medical care, for the child. The petitioner and her immediate family, who are members of the Ho-Chunk tribe, have been very supportive of the petitioner's efforts to raise EO.
6. The petitioner filed a foster home license application with Wood County in 2014. On that application, she incorrectly failed to disclose her prior disorderly conduct and criminal traffic convictions. EO's foster care case was transferred from the county to the Department before a decision was made on the foster home license application, so the county made no final decision on that application.
7. The petitioner has a 2007 disorderly conduct conviction, an unclassified misdemeanor for operating without a driver's license, and two OWI citations.
8. [REDACTED] and [REDACTED] advised the petitioner of [REDACTED]'s pending criminal charges prior to November 2014.
9. The petitioner filed an adoption application for EO. The adoption application asks whether the applicant has ever been the subject of any criminal charges or convicted of a crime anywhere. She incorrectly failed to disclose her disorderly conduct and criminal traffic convictions. The petitioner was also interviewed in connection with the adoption application. During the interview with social worker [REDACTED] on November 12, 2014, she stated that she did not believe in the correctness of the criminal charges facing [REDACTED]. She was also vague when questioned about her background check responses.
10. The Department abruptly removed EO from the petitioner's home on February 27, 2015.
11. The petitioner's special needs adoption application for EO was denied by the Department on February 27, 2015.
12. EO has successfully adapted to his new foster home (Home #2). He has formed an attachment to his new foster mother, and had lived there for five months as of the date of this hearing. The Home #2 parents had previously successfully adopted a special needs child. The Home #2 parents wish to adopt EO, have completed a home study, and were approved for that adoption by the Department.

## DISCUSSION

The purpose of the law regulating foster care licenses is to protect and promote the health, safety, and welfare of children placed in foster homes. Wis. Stat. § 48.67; Wis. Admin. Code § DCF 56.01(1)(September 2011). The best interests of the child must always be the paramount consideration. Wis. Stat. § 48.01(1) intro.

An Administrative Law Judge lacks the authority to order a county agency to return the child to petitioner and/or make any placements of foster children with a foster licensee. This is a well-settled rule of law. *See*, DHA-Work & Family Services Unit, f/k/a, Office of Administrative Hearings, Case No. FOS-51/68441 (OAH March 19, 1992)(DHSS), OAH Case No. FOS-40/74526 (OAH April 5, 1993)(DHSS); and more recently, DHA Decision Nos. FOS-53/85323 (Wis. Div. of Hearings & Appeals September 21, 2007)(DHFS), and FOS-67/97562 (Wis. Div. of Hearings and Appeals January 5, 2009)(DCF) .

### I. REMOVAL/*BINGENHEIMER* DECISION.

Wisconsin Statute § 48.64(4)(a) declares that any decision or order issued by an agency that affects the head of a foster home or the children involved may be appealed to the department under fair hearing procedures established under the department's rules.

The Wisconsin Supreme Court has interpreted this to mean that foster parents are entitled to a fair hearing on decisions which affect the interests of foster parents even in settings in which the outcome of the hearing will in no way affect a child's placement. *Bingenheimer v. DHSS*, 129 Wis.2d 100, 102, 383 N.W.2d 898 (1986). A foster parent is entitled to use such a fair hearing to dispute the allegations of the county agency in order to clear her name, protect her interest in equitable treatment, and defend against mistaken, negligent, or arbitrary agency allegations. *Bingenheimer*, 129 Wis.2d at 110. Such a fair hearing might, for instance, result in a decision to produce factual findings relevant to future licensing of the parents. *Bingenheimer*, 129 Wis.2d at 110. However, the administrative hearing is rendered "...ineffectual and meaningless..." on the subject of the child's placement. *Bingenheimer*, 129 Wis. 2d at 106-7.

Thus, although I cannot direct the Department or a county agency to return EO to the petitioner's home for further foster care, I can make a declaration as to whether I believe that the emergency removal of EO from the petitioner's care was warranted. In my opinion, it was not. The physical home was safe and appropriate. The petitioner was providing safe, appropriate, loving care for the child. Her extended family was supportive of her child-raising, and assisted in EO's care. In particular, the testimony of the petitioner's father, [REDACTED], was quite touching and believable in describing the extended family's willingness to help raise EO as a member of the Ho-Chunk people. I also believe that the petitioner was sufficiently attentive to the child's medical needs. There was a miscommunication with a medical provider over the petitioner's willingness to have a suspicious mole removed from EO's genitals promptly (she was willing). I accept the petitioner's version of the mole removal story as credible, and that incident was not a factor in my decision regarding the removal or the adoption application. I also believe that petitioner's assertion that she has abstained from alcohol for at least two years. I conclude that the dramatic and traumatic removal of the child from the petitioner's home on February 27, 2015, was unwarranted. EO could have safely remained in the petitioner's home until such time as an adoptive placement was ready.

### II. ADOPTION APPLICATION.

The Department denied the petitioner's special needs adoption application because she repeatedly gave false information on background disclosure forms/interviews and she did not have an adequate appreciation of the

seriousness of child maltreatment issues. The burden of proving that denial was erroneous rests with the applicant/petitioner, and it has not been met. Thus, the denial was correct.

State code contains the following relevant provisions:

**(3) DECISION TO CLOSE APPLICATION.**

**(a)** Home study of an applicant may cease and the home study application may be closed at any time during the home study process if the department determines any of the following:

**1.** That the applicant does not meet eligibility requirements of this chapter or foster home requirements of ch. [DCF 56](#).

**2.** That the applicant provided false information to the department.

**3.** That the final determination on the adoptive family assessment is unacceptable.

...

**(8) ELIGIBILITY CRITERIA.** The department shall use the following criteria in making a home study and in determining whether to approve an applicant for placement of a special needs child:

**(a) Foster home licensing rules.** The applicant shall meet the requirements of ch. [DCF 56](#). An exception to a requirement in ch. [DCF 56](#) requires the approval of the bureau director or that person's designee.

**(b) Financial.** [n/a]

**(c) Health.** ... [n/a].

**(d) Family functioning.** The department shall gather family and child information during the home study process and document this information in a family assessment. An applicant demonstrating significant risk to children does not meet eligibility criteria. The assessment shall consider at least the following information: functioning of children in the home; vulnerability of children in the home; how an applicant views the applicant's children; an applicant's level of functioning; social, educational and health history of family members; parenting practices and philosophy; interpersonal relationships; demographic factors; family member roles and communications; extended family considerations; an applicant's views about maltreatment; an applicant's views about adoptable children; an applicant's views about birth parents; preparation of all family members for adoption; an applicant's motivation and commitment; resources available within the family; and external or community resources.

**(e) Marital status.** Applications shall be accepted from:

**1.** Adult married couples, ... .

**2.** Single adult Wisconsin residents.

Wis. Admin. Code § 51.07(3),(8).

The petitioner repeatedly gave the Department false information regarding her past history of an OWI, which is contrary to § [DCF 51.07\(3\)\(a\)2](#), above. She excuses this by asserting that she is not good with paperwork. That excuse might work if this happened only once. However, it happened on her Wood County foster care application BID form (Exhibit R5, August 12, 2014), and on the adoption application BID form (Exhibit 15, September 15, 2014), and during her November 2014 interview.

The Department was also correct to conclude that the petitioner was ill-prepared to deal with the child's vulnerability in her home and had an ill-considered view of child maltreatment. This conclusion is tied to her persistent view that [REDACTED] could not have abused his children, notwithstanding two abuse substantiation decisions, pending criminal charges for sexual abuse, and his flight from Wisconsin. While the application was pending, the petitioner had no conceived plan for keeping EO safe if [REDACTED] should choose to return to his home. She seemed not to believe such protection was necessary. If [REDACTED] had returned while EO was in

the petitioner's foster care, the petitioner could have sought guidance from her agency social worker. However, after an adoption is final, the overseeing social workers step away. I am not convinced that, left to her own devices, the mild-mannered and deferential petitioner would have had the wisdom and fortitude to keep [REDACTED] away from EO.

### CONCLUSIONS OF LAW

1. The Department incorrectly removed the child EO from the petitioner's home on February 27, 2015.
2. The petitioner provided false information to the Department regarding her criminal background.
3. The petitioner's views regarding child maltreatment by her brother were correctly treated as a factor weighing against approval of the petitioner's adoption application.
4. The Department correctly declined to approve the petitioner's application for adoption of EO.

**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**

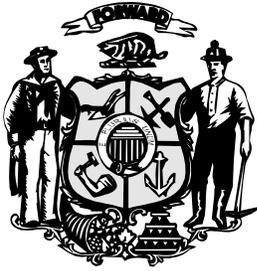
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court *and* served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, *and* 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 23rd day of December, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 23, 2015.

Foster Care

Attorney Sandra Zenor

Attorney [REDACTED]