



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCB/167170

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on August 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On March 2, 2015, the Petitioner applied for FS benefits via online ACCESS application. Petitioner reported a household of four including himself, his wife and two minor children. In addition, the Petitioner's wife is pregnant. Petitioner reported he attends college or university

full-time. Petitioner's wife is not working or attending school. Petitioner also reported employment with [REDACTED] of 20 hours/week at \$22/hour.

3. Petitioner and his family entered the US on August 17, 2014 on F-1 and F-2 visas.

DISCUSSION

In order to receive child care benefits in Wisconsin, the benefits must be for a child who is a US citizen or a qualified alien. Wisconsin Child Care Manual (CCM) § 1.2.5. A "qualified alien" is defined in the CCM § 1.2.0 as follows:

"Qualified Alien. A qualified alien must meet one of the following criteria:

- An alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act;
- An alien who is granted asylum under section 208 of such Act;
- A refugee who is admitted to the United States under section 207 of such Act;
- An alien who has been certified as a victim of trafficking;
- An alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least one year;
- An alien whose deportation is being withheld under section 243(h) or 241(b)(3) of such Act;
- Cuban and Haitian aliens, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;
- An American Indian born in Canada who is at least 50% American Indian by blood, or an American Indian born outside of the United States who is a member of a federally recognized Indian tribe;
- An alien who has been battered or whose child has been battered, who is no longer residing in the same household with the batterer, and who meets the requirements of 8 USC 1641(c);
- An alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;
- Amerasian Immigrants, as defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.
- An alien who is lawfully residing and is one of the following: An armed forces veteran who received an honorable discharge that was not on account of alienage and who completed either 24 months of continuous active duty or the full period for which the individual was called, unless the individual received a hardship discharge under 10 USC 1173, early discharge under 10 USC 1171, or a discharge due to a disability incurred or aggravated in the line of duty. On active duty in the armed forces of the United States, other than active duty for training. The spouse of an individual described in subdivision a. or b., or the un-remarried surviving spouse of an individual described in subdivision a. or b. if the marriage was for one year or more or the individual had a child in common.
- An alien who is lawfully residing in the United States and authorized to work by the immigration and naturalization service.

Also, in order to be eligible for child care benefits, a two-parent family must have both parents participating in approved activities unless a parent is unable to participate in an approved activity or unable to provide care for children due to a disability or health condition. An inability to care for children or participate in an approved activity must be verified by a physician. CCM, § 1.4.8.2.

"Approved activities" for purposes of being eligible for child care benefits include: participating in the Learnfare program, attending high school for age 19 and younger, unsubsidized employment, job training, apprenticeships, sheltered employment, work study, self-employment, W-2 or TANF employment, FSET participation, basic education activities, or college enrollment. CCM §1.5.0.

In this case, the Petitioner's wife is not participating in an approved activity and therefore is deemed to be able to care for her children. In addition, the Petitioner's children are not "qualified aliens" as that term is defined in the child care regulations.

Based on the evidence presented, I conclude the agency properly denied the Petitioner's application for child care benefits.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is not eligible for child care benefits.

THEREFORE, it is ORDERED

That 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, 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 Milwaukee,
Wisconsin, this 4th day of September, 2015

\sDebra Bursinger
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 September 4, 2015.

Milwaukee Enrollment Services
Child Care Benefits