



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/168871

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Children's Service Society of Wisconsin in regard to Foster Care, a hearing was held on October 14, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the petitioner's appeal was timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Amy Bennett, Foster Care Worker
Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Winnebago County.
2. On August 20, 2015 the petitioner signed and submitted an application for a foster care license. She stated that she had only had one arrest for "violating a law including traffic violations."
3. The agency ran a criminal background checks through DOJ, IBIS Caregiver, DOT, CPS, and CCAP. The agency determined that the petitioner had the following arrests:

- July 9, 1987 arrest for forgery by [REDACTED]
 - October 11, 1996 arrest for theft of less than \$1,000 by the [REDACTED]
 - January 13, 1998 arrest for failure to appear by the [REDACTED]
 - April 16, 2001 suspect in an operate vehicle without owner's consent. This case was investigated by the [REDACTED]. No criminal charges were issued.
 - August 21, 2004 arrest for issue of worthless checks by the [REDACTED]
 - December 2, 2012 person of interest in a bail jumping case investigated by the [REDACTED]
4. The agency also determined that the petitioner had an allegation of abuse or neglect reported against her in 1993 in Milwaukee County. This child protective services allegation was not the petitioner.
 5. On August 26, 2015 the agency sent the petitioner a letter stating that they had denied her foster care license application. The letter stated if the petitioner wished to appeal the denial decision, she must submit a written request that must be received by the Division of Hearings and Appeals within 15 days of the date of the letter.
 6. On September 21, 2015 the Division of Hearings and Appeal received the petitioner's Request for Fair Hearing. The letter is dated September 14, 2015, and post-marked September 16, 2015.

DISCUSSION

Wis. Stat., §48.72, provides that an appeal of a denial of a foster home license must be sent "within 10 days after the date of the department's refusal" to issue the license. The Wisconsin Administrative Code, DCF § 56.10(2), clarifies the time limit for appeal further:

A request for a hearing shall be in writing and shall be addressed to the department of administration's division of hearings and appeals. The date of the request for a hearing shall be the date on which the request is received by that office. Any request for a hearing shall be received no more than 15 days after the date of the notice of the agency decision to deny, revoke, or not renew the license.

The Division of Hearings and Appeals (DHA) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely.

DHA did not receive the petitioner's Request for Hearing until September 21, 2015. Going by the administrative code section and the time limit indicated in the petitioner's notice, the petitioner had 15 days from August 26, 2015 to request a hearing. 15 days from August 26, 2015 is September 10, 2015. DHA did not receive the petitioner's request until September 21, and therefore I am without jurisdiction to reach the merits of this case.

I note that if I had jurisdiction, the outcome of this appeal would be the same because I would have found in the agency's favor. Wis. Admin. Code, DCF § 56.05(1)(a)(1) states the following:

a person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, who does not abuse alcohol or drugs or have a history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children or operating a foster home, as described in Ch. DHS, and who exercises sound judgment and displays the capacity to successfully nurture foster children

This administrative code section goes on to state:

The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not he or she meets the requirements under subj. 1. Giving false information or withholding relevant information shall constitute ground for denial or revocation of the license.

Wis. Admin. Code, DCF § 56.05(1)(a)(2).

I agree with the petitioner that the CPS report from Milwaukee County is not her. Given her age, the year of the report, the facts contained in the report, and the petitioner's testimony, it is fairly clear that she is not the [REDACTED] listed in that report. It is equally clear that the various arrests between 1987 and 2012 are the petitioner. The petitioner failed to list many of these arrests on her application. Although some of these arrests are dated, and many of these arrests did not result in criminal charges or convictions, these arrests demonstrate a very concerning pattern for a potential foster parent. At a minimum the petitioner has a pattern of exercising poor judgment, which would interfere with her capacity to successfully nurture foster children.

CONCLUSIONS OF LAW

The petitioner's appeal was not timely, and I am without jurisdiction to decide the merits of the case.

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

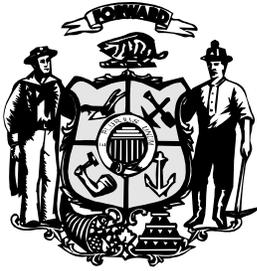
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** 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 Milwaukee,
Wisconsin, this 2nd day of December, 2015

\sCorinne Balter
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 December 2, 2015.

Children's Service Society of Wisconsin
DCF - Foster Care