



STATE OF WISCONSIN

In the Matter of



DECISION

CCB 169070

The attached proposed decision of the Administrative Law Judge dated January 25, 2016, is hereby adopted as the final order of the Department.

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.

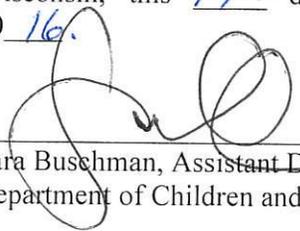
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, WI 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 request (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 17th day of March,
20 16.



Sara Buschman, Assistant Deputy Secretary
Department of Children and Families



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

CCB/169070

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied full-time childcare authorization for the petitioner's school aged, home-schooled child, during the typical school day.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



By:



Respondent:

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

By:



Office of Legal Counsel
Department of Children and Families

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She has two children ages 6 and 1. Only her 6 year child is school-aged.
2. In September 2015 the petitioner was employed full-time at [REDACTED]. She testified that she home-schooled her school-aged child during the evenings and one the weekends.
3. On September 2, 2015 the petitioner sought full-time childcare authorizations for both her children to attend the [REDACTED]. She sought this authorization for both of her children during the typical school day. The owner of [REDACTED] is close to the petitioner. The father of the petitioner's oldest child is the female [REDACTED] owner ex-wife. The owner and the petitioner have remained close.
4. The petitioner was financially eligible for the Wisconsin Shares Program.
5. The agency worker initially authorized child care for the petitioner's school-aged child to attend [REDACTED] during the day. The worker was not sure whether this was correct, and contacted the State for guidance. The State determined that full-time child care assistance should not have been authorized for a school-age child to attend daycare during the typical school day. The worker stopped the authorization, and informed the petitioner of this. The authorization for the petitioner's 1 year old child is not at issue in this appeal.
6. On October 5, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The purpose of the Wisconsin Shares Child Care Subsidy Program is to offer low-income families the ability to work. *Wisconsin Shares Child Care Subsidy Program Policy Manual (Manual)*, § 1.1.1. The program accomplishes this goal by subsidizing a portion of the families' child care costs. *Id.* In order to qualify for Wisconsin Shares Child Care Subsidy Program families must be financially eligible, parents must be in an approved activity, and children must also be age eligible. *Id.*, § 1.1.4 and 1.1.5.

Funds for the Wisconsin Shares Child Care Subsidy program must be expended consistent with the federal regulations, and applicable State and local laws unless the federal regulation supersede these state and local laws. 45 C.F.R. § 98.54 (1-2). Wis. Stat. § 49.155(1m) lists the specific state and local requirements for the Wisconsin Shares Child Subsidy program. These requirements are more clearly spelled out in the programs manual as stated above. Section 2.2.2 of the Manual addresses authorization assessment. This section states:

Authorization workers are responsible for evaluating the needs for child care for all family or case types. Care authorizations must be based on an assessment of:

- The number of hours of care each child in the family needs per week to enable the parent(s) to participate in the approved activities, including lunch and break times, and travel time between the work-activity and the child care location
- Overlapping schedules of two parent families
- The appropriate type of authorization (attendance attendance-based or enrollment enrollment-based)
- The length of time child care is needed (up to six months)
- The copayment type
- The child's school schedule
- Shared placement schedules
- Any other factors that impact the need for child care

I further note that section c of 45 C.F.R. § 98.54 specifically states the following:

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

- (1) Any service provided to such students during the regular school day;
- (2) Any service for which such students receive academic credit toward graduation; or
- (3) Any instructional services that supplant or duplicate the academic program of any public or private school.

In this case the issue is whether the Department correctly denied full time first shift child care for the petitioner's school-aged child. The petitioner argues that the Department did not present a specific written policy, language, or statute prohibiting this type of authorization. She further argues that she meets all of the specific financial and non-financial eligibility requirements. The problem with the petitioner's argument is that she is asking the Department to create a new category of eligibility for home-schooled children.

The current policy and regulations allow the Department discretion in authorizing childcare. This policy directs the workers to consider the number of hours of care each child needs to enable the parent(s) to participate in the approved activities, the children's school schedule, and any other factors that impact the need for child care. A factor present in this case is that public education, charter schools, and vouchers for private schools are options for this petitioner's school-aged children. The petitioner has opted not to take advantage of the many education options, and to instead home-school her children. She then wants child care subsidies to pay for her children to attend the daycare during the typical school day. The Department has assessed these factors, and has determined that the petitioner is not eligible for full-time child care for her school-aged, home-schooled child, during the typical school day.

The Department's denial is consistent with the purpose, policy, and regulations of the Wisconsin Shares Child Subsidy Program. This program was not designed to allow a parent to home-school his or her children. There are separate funds for public education and other education options like charter schools and vouchers to attend private schools. This program was designed to give lower income individuals the ability to work by providing child care assistance. The Department has the discretion to authorize these funds. I find that they have properly used their discretion.

There is no evidence that the Department arbitrarily denied childcare assistance to this particular petitioner. The agency initially authorized this childcare assistance. After the authorization they had some questions, and sought clarification from the State. The State informed the agency that full-time child care for school-aged child during the typical school day should not be authorized. The agency then ended the petitioner's child care authorization.

The petitioner did not provide any specific examples of this type of authorization in other areas of the State. The petitioner's representative appeared very hesitant to provide specific examples. Her hesitation was likely due to the very reasonable and justified fear that if the Department knew of any full-time child care authorization for school-aged children, the Department would cease those authorizations as well.

CONCLUSIONS OF LAW

The Department correctly denied full-time childcare authorization for the petitioner's school aged, home-schooled children, during the typical school day.

THEREFORE, it is

ORDERED

If this proposed decision is adopted by the Secretary of the Department of Children and Families, in a final decision, then the appeal is dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION

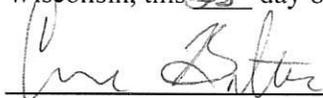
This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,
Wisconsin, this 25 day of January, 2016



Corinne Balter
Administrative Law Judge
Division of Hearings and Appeals