



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/171623

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2016, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on March 16, 2016, at Madison, Wisconsin. The hearing record was extended one day for the faxing of the petitioner's exhibits, which were received. The Administrative Law Judge also took judicial notice of the notices mailed to the petitioner from July 27, 2015 through February 29, 2016, from the Department's CARES Client Correspondence History database.

The issue for determination is whether the Department correctly (1) retroactively rescinded a CC authorization for the January 3 – 23, 2016 period, and (2) declined to issue a CC authorization for the petitioner for the January 24 through February 13, 2016 period.

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: [REDACTED] ES Spec.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Because the petitioner was employed at [REDACTED] in August, 2015, the Wisconsin CC program created authorizations for the petitioner's three minor children for the August 2, 2015 through January 30, 2016 period. An authorization notice was mailed to her on August 17, 2015, showing an authorization end date of January 30, 2016.
3. The petitioner's employment at [REDACTED] ended October 12, 2015. The petitioner timely reported, on October 2, to the agency that this employment was ending. The agency erred by not ending the authorizations on October 12, 2015, and did not actually end them until January 19, 2016 (retroactive to January 2, 2016). The agency further erred by incorrectly mailing the petitioner an authorization notice on October 26, advising of a payment rate change for one child, with the authorization ending January 30, 2016. The agency did not issuing a notice advising of the authorization or CC eligibility ending until January 25, 2016.
4. After October 12, 2016, the petitioner continued to take her children to a daycare that billed the CC program for their care. She has not documented employment for the October 3, 2015 through January 24, 2016 period. She began a new job on January 25 at [REDACTED] ([REDACTED]).
5. The petitioner reported her [REDACTED] job on January 19, 2016, and submitted verification of her employment wages/hours to the Department on January 22, 2016.
6. The agency began a new CC authorization for the petitioner, beginning February 14, 2016.
7. The Department either "clawed back" its payment to the CC provider, or declined to pay a claim filed by the provider for the January 1 through January 22, 2016 period. The provider is now requesting payment for that period from the petitioner.

DISCUSSION

The agency believes that the petitioner may have been overpaid CC benefits from October 19, 2015 through January 2, 2016. However, an overpayment calculation had not been made at the time of hearing, so the validity of the fall 2015 overpayment decision is not ready for me to adjudicate. The only issue that is ready for me to decide is whether the agency correctly determined that no CC benefits can be authorized and paid for on the petitioner's behalf for the January 3 through February 13, 2016, period.

Wis. Stat § 49.155 authorizes the department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also, Wis. Admin. Code ch. DCF 201. The department has a *Wisconsin Shares Child Care Subsidy Manual (Manual)* that provides the specific policies for the program (viewable online, <http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>). The *Manual*, §1.4.8, states that a recipient must be engaged in one of the enumerated activities in order to be authorized for childcare benefits. Employment is one of the approved activities. The petitioner was not engaged in an approved activity from January 2 through 24, 2016. She was engaged in the qualifying activity of unsubsidized employment from January 25, 2016, through at least the date of hearing.

I. AUTHORIZATION FOR THE NEW JOB (1/24/16 – 2/13/16).

When the petitioner telephoned the agency on January 19 to report that she would return to work on January 25, the agency reasonably requested verification of the return to work. The petitioner provided it the next day. I can see no reason why the agency did not create an authorization to commence on Sunday, January 24, 2016. The policy that pertains to creating an authorization states as follows:

2.2.3.1 Backdating Authorizations

At initial eligibility, an authorization may be backdated to the Sunday of the week the current eligibility period begins

If a family that has been determined eligible for child care assistance does not request an authorization for child care reimbursement until several months after initial eligibility has been determined, the authorization may be backdated to only the first of the month of the request for authorization.

2.2.3.2 Backdating Authorizations for Ongoing Eligibility

Late requests for child care authorizations should be honored if all work criteria are met and eligible care has been provided. CSAW allows backdating authorizations and attendance up to three months in the past. If an agency needs to back date an authorization for a time period that is greater than three months in the past, a worker with 'retro' security access must enter those authorizations into CSAW.

Manual, §2.2.3.1, 2.2.3.2. *See also*, § 2.2.16, for Sunday start date. There are hints in Case Comments (Exhibit 2) that the petitioner initially, inexplicably wanted to delay the start of the authorization for her new job. However, that desire to delay did not persist, and retroactive authorization to January 24 should have been granted. Per policy, the new authorization should have begun January 24, 2016.

II. JANUARY 3-23, 2016.

The more difficult decision is what to do with the agency's retroactive authorization termination occurring on January 19, with notice not given until January 25, 2016.

To recap, prior to October 2, the petitioner had an authorization in place with an expiration date of January 30. She was issued an authorization notice showing the January 30 expiration date. On October 12, she timely reported the end of employment. The agency incorrectly failed to end the authorization. Instead, on October 26, the agency issued a notice advising that the payment rate for one child would change, and that the authorization remained in force through January 30. Also, the agency did not issue a notice to the petitioner advising that her CC eligibility was ending. Instead, it issued a notice on October 14, declaring that the petitioner had completed her eligibility review and that eligibility would continue beginning November 1, 2015. *See*, Exhibit 1. The petitioner discussed her situation with her daycare provider after October 12, and the provider opined that the petitioner should continue to bring the children to daycare because she had open authorizations. The petitioner incorrectly continued to take her children to daycare while not working.

On January 19, the petitioner reported commencement of a new job to the agency. On that same date, the agency realized its error in not ending the old authorizations. Supposedly, the agency acted to end the old authorizations on January 19, although written notice of the ending authorizations was not mailed to the petitioner until January 25, 2016. *See*, Exhibit 7, Notice of 1/25/16, obtained via judicial notice by the Administrative Law Judge. The agency did not end the authorizations on the date of discovery, however. Instead, the agency retroactively ended the authorizations effective January 2, which was 23 days before the date of the notice issued to the petitioner. That was not acceptable.

Basic due process in government assistance programs requires that notice be given before a benefit ends, not after. That standard is captured in the CC program's state code chapter:

(d) Notice. *If the department or a child care administrative agency refuses to issue new authorizations, revokes existing authorizations, or refuses to issue payments to a provider under par. (c) or (cr), the child care administrative agency or the agency shall provide written notice to the parent and provider as soon as possible before the effective date of the penalty.*

[emphasis added]

Wis. Admin. Code § DCF 201.04(5)(d).

There is also federal authority for this advance notice requirement. CC funding comes, at least partially, through the federal TANF grant. *See, Wisconsin Temporary Assistance to Needy Families (TANF) State Plan*, Attachment 1, at http://dcf.wisconsin.gov/tanf/pdf/draft_tanf_state_plan.pdf . TANF is federally authorized under Title IV-A of the Social Security Act. Federal rules that elaborate on notice requirements for Title IV-A programs, include the following:

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized ... or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing.

...

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of §205.10 of this chapter.

45 C.F.R. § 206.10(a)(4),(7). The cross-referenced § 205.10(a)(4)(i)(A) requires that notice be given in advance of the action.

Because advance notice was not given, the agency was wrong to rescind the authorizations going back to January 3. If the petitioner wishes to have the agency make the payments to the provider, it must do so. However, the petitioner should be aware that the payments for the January 3 – 23, 2016 period will likely be viewed by the agency as an overpayment, which the agency will try to collect from her at a later date.

CONCLUSIONS OF LAW

1. Following the agency's receipt of the petitioner's employment verification on January 22, 2016, the agency should have retroactively authorized the appropriate CC for the petitioner beginning January 24, 2016.
2. The agency acted incorrectly in retroactively revoking existing authorizations beginning January 3, 2016, due to lack of advance notice to the petitioner .

THEREFORE, it is

ORDERED

That the petition is remanded to the local agency with instructions to:

- (1) Create authorizations for the petitioner's children for the January 24 through February 13, 2016, period, and
- (2) Reverse revocation of the petitioner's authorizations for the January 3 through January 24, 2016 period, and make appropriate payment to the provider (unless the petitioner requests nonpayment within 10 days of the date of this Decision).

These agency actions shall be taken within 20 days of the date of this Decision.

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 11th day of May, 2016

\sNancy J. Gagnon
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 May 11, 2016.

Dane County Department of Human Services
Child Care Benefits