



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCB - 175159

PRELIMINARY RECITALS

Pursuant to a petition filed on June 24, 2016, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care (CC), a hearing was held on July 26, 2016.

The issue for determination is whether the respondent correctly determined petitioner's Child Care eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Melanie Barnes

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner had earned income from [REDACTED] through March 9, 2016. After that date, petitioner had self-employment income from her hair salon. Petitioner owns her hair salon and rents out space to other stylists. She did not have any profit from ownership of the salon in 2015, and therefore did not file income taxes regarding the salon ownership in 2015.
3. Petitioner filed a Six Month Report Form (SMRF) on May 26, 2016, reporting the end of employment with [REDACTED], and commencement of self-employment via [REDACTED] on March 14, 2016.
4. On May 27, 2016, a Notice of Proof Needed was sent to petitioner with a blank Self-Employment Income (SEI) report form. On June 6, 2016, petitioner provided the completed SEI and her 2015 taxes. Petitioner's taxes were deemed questionable, and petitioner was asked to provide her tax transcripts for 2015.
5. Petitioner provided the tax transcripts on or about June 22, 2016. She also provided updated SEI forms for July-December; respondent calculated her net income as \$321/month. Petitioner was erroneously informed that she was eligible for 7 hours of child care weekly; she was actually eligible for 11 weekly hours.
6. The respondent then pended petitioner's case for household composition after questioning the status of an absent parent, RB, and child support confirmation, and a CARES notice was mailed to her on June 23, 2016.
7. RB never resided with petitioner.
8. On July 7, 2016, the respondent sent petitioner a Notice of Proof Needed for actual income and expense receipts for March – June, 2016 for self-employment verification.
9. On July 17, 2016, the respondent sent petitioner a Notice that Child Care would close July 31, 2016, due to failure to provide requested verification.

DISCUSSION

Wis. Stat., §49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. The department has a Wisconsin Shares Child Care Subsidy Policy Manual that provides the specific policies for the program. Eligibility for child care runs for six month periods.

The Wisconsin Shares Child Care Subsidy Policy Manual provides that the agency can request any information that is necessary and appropriate in order to make a correct eligibility decision. *Manual 1.6.2*. As the applicant, petitioner had the primary responsibility for providing verification. *Child Care Manual 1.6.1*. The county agency must inform the applicant in writing of the verification items that are needed along with a due date. *Manual 1.6.6*. If the applicant fails to produce the information, no eligibility shall exist. *Manual 1.6.9*.

Self-employed individuals have additional requirements:

Self-employment income for child care eligibility is defined in statute as the sum of net earnings reported to the Internal Revenue Service and depreciation expenses, personal business and entertainment expenses, personal transportation costs, purchases of capital equipment, and payments on the principal of loans.

The expenses noted above are invalid expenses for child care and are added to the net income field in CWW during child care eligibility determination.

CARES Worker Web will calculate the monthly self-employment income for the Child Care Assistance Group when the self-employment page is completed. CWW has a field to enter depreciation expenses. Add together personal business and entertainment expenses, personal transportation costs, purchases of capital equipment, and payments on the principal of loans and enter it in the CC Only Invalid Expenses field.

Manual, 1.5.5.4.

The Manual also provides that,

Parents who operate self-employment businesses must file taxes with the IRS in order to participate in the Wisconsin Shares Program. Filed IRS tax documents for the most recent tax year must be provided for parents who wish to receive child care subsidy while self-employed.

Self-employed parents who have not filed taxes because the business has not yet operated in a calendar year and subsequent tax season must provide a Self-Employment Income Report form (SEIRF) (form DCF-F-DWSP2131 or form DHS F-00107) for the last 30 days.

SEIRFs may also be submitted for months when the previous year's filed IRS tax documents do not represent the current income for the business. Additionally, when a new business is six months old, a SEIRF must be provided so that an accurate authorization can be written. See 2.2.8 for information about authorizations for self-employment.

If IRS tax documents or SEIRFs appear questionable or need clarification, local agency staff must follow up with the parent and request additional verification, such as documentation of receipts, contracts, or expenses. Also see section 1.6.5. Any additional verification requirements must be documented in CWW case comments.

Manual, 1.6.2.2. (emphasis added)

Of note, the *Manual* also instructs that, “[i]f the applicant has made a reasonable effort and cannot obtain the information, the agency must assist the applicant in obtaining the verification. No signed release of information is needed when assisting the client to obtain this information.” *Manual, 1.6.8.*

The Enrollment Services representatives testified that they correctly and accurately calculated and reduced petitioner’s child care hours to 11 hours per week, based upon the net income that they calculated; they conceded that petitioner was incorrectly informed by a worker that the reduction was to 7 hours weekly. Then, after the petitioner filed a request for hearing regarding the respondent’s action to pend the SMRF renewal regarding household composition and child support cooperation, the respondent sent new verification requests for SEI to petitioner; when those were not received by the due date, petitioner was informed that her Child Care eligibility would end July 31, 2016.

It turns out that the household composition issue was raised in error, apparently based upon confusion over the names of petitioner’s child’s (RB, III), his father (RB, Jr) and his grandfather (RB).

The petitioner argued that she was confused by the information that she was required to submit as verification. She testified that she spent four hours at respondent’s offices on June 22, 2016, trying to understand and comply with the verification request. The respondent’s records confirm this testimony.

While petitioner was obviously having difficulty providing the information that the respondent was requesting, the record does not demonstrate any assistance being provided as required by the *Manual* beyond conversations with petitioner.

At the heart of the confusion here is petitioner's ownership of the salon and tax filings pertaining thereto. Petitioner testified that she did not receive any profit from ownership of the salon in 2015, and therefore did not file business taxes that year; she stated that she did not file taxes relating to the business on the advice of her tax advocate. She had other employment at that time, and she later left said employment and returned to working at the salon in March of 2016.

Late in the hearing, the respondent asserted that petitioner is simply not eligible for Child Care because she did not file business taxes for the salon. However, the Manual specifies that a self-employed individual must file annual taxes with the IRIS. It does not specify "business" taxes, though that may be arguably assumed. The petitioner did file taxes in 2015, but I would still question how relevant 2015 business taxes would be, since petitioner testified that there was no profit for 2015, and petitioner's income situation completely changed in March of 2016.

As to the final issue regarding closure of the case as of July 31, 2016, the respondent contends that petitioner never submitted requested verifications. The petitioner responded that, as she had filed an appeal, she understood that the matter was on hold, pending hearing. I find this to be plausible, in light of the confusing and changing rationale for the multiple verification requests, including household composition.

I conclude that there is insufficient reliable evidence in the record to determine whether the county agency correctly and accurately reduced the petitioner's child care authorization hours to 11 hours per week, and then, subsequent to the filing of the instant appeal, sought to close her benefits as of July 31, 2016.

CONCLUSIONS OF LAW

There is insufficient reliable evidence in the record to determine whether the county agency correctly and accurately reduced the petitioner's child care authorization hours to 11 hours per week, and then, subsequent to the filing of the instant appeal, sought to close her benefits as of July 31, 2016.

THEREFORE, it is

ORDERED

The matter is remanded to the respondent with instructions to: a) re-calculate the petitioner's eligibility for child care authorization hours retroactive to the date that the 11 hours were determined; and b) issue to the petitioner a new notice of decision which explains in detail the determination and calculation of petitioner's child care authorization hours, within 10 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, **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 10th day of October, 2016

\s _____
Peter McCombs
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 October 10, 2016.

Milwaukee Early Care Administration - MECA
Child Care Benefits