



STATE OF WISCONSIN
Division of Hearings and Appeals

In The Matter Of
Little Explorers Daycare

PROPOSED
DECISION

ML-09-0487

PRELIMINARY RECITALS

Pursuant to a petition filed on December 14, 2009, under Wis. Admin. Code §DCF 56.07(1)(e), to review a decision by the Waukesha County Dept. of Health and Human Services to recover child care assistance paid to a child care provider and suspend the provider for six months, a hearing was held on April 12, 2010, at Pewaukee, Wisconsin. At the request of the petitioner, the record was held open for 20 days for the submission of additional information.

The issues for determination are: (1) Whether petitioner was overpaid \$8,069.83 in child care payments; (2) Whether the county agency correctly suspended the child care provider from child care payments for six months.

PARTIES IN INTEREST:

Petitioner:

Little Explorers Daycare
By: Tamara Ptaschinski
850 W28532 Saylesville Road
Waukesha, WI 53189

Wisconsin Department of Children and Families
201 East Washington Avenue, Second Floor
P.O. Box 8916
Madison, WI 53708-8916

By: Jennifer Homp, Child Care Specialist
Waukesha County Dept. of Health & Human Services
c/o Kaiser Group
The Workforce Development Center
892 Main Street
Pewaukee, WI 53072

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is the operator of a child care business in Waukesha County.
2. On May 13, 2009, the county agency's child care unit issued a letter to the petitioner informing her that it would make an unannounced site visit on that day, and among other actions the agency would ask to view and copy original daily logs, removing such documents for up to 3 business days for copying.
3. On May 13, 2009, the Department and its agents conducted the site visit and collected documents concerning child attendance at the daycare from March 29, 2009 – May 13, 2009; and December 28, 2008 – February 28, 2009.
4. On November 25, 2009, the county agency issued a letter to the petitioner informing her that after reviewing the records obtained on May 13, 2009, the agency determined that based on her sign-in/out records, she had over reported hours of attendance; resulting in an overpayment of Wisconsin Shares to her facility; and she had provided cares and submitted hours for dates for which the center was not licensed. The letter notice informed the petitioner that the agency would be seeking recovery of an overpayment of Wisconsin Shares payments to her totaling \$8,069.73; and that as a result it would be rescinding all child care authorizations for children attending the petitioner's child care operation, and it would suspend her and refuse to issue any new authorization for the use of the petitioner's day care for 6 months. See, Exhibit #2, pp. 2-3.
5. In addition, also on November 25, 2009, a letter was issued by the agency to the parents of the children attending Little Explorers daycare specifically informing her that all subsidized child care authorizations for that operation would be suspended and ending on December 5, 2009. See, Exhibit #2, p.1.
6. On December 14, 2009, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency actions described in Finding of Fact #4, above.
7. The county agency computed the amended overpayment amount as shown in Exhibit #4, based upon a comparison of the Daily Attendance Record (the "logs") provided by the petitioner as compared to the Provider Attendance reports submitted by the petitioner claiming payment. See, Exhibits # 5 & #4.

DISCUSSION

(1) Whether petitioner was overpaid \$8,069.73 in child care payments.

Appeals of actions against child care providers are allowed pursuant to the Wisconsin Administrative Code, §DCF 201.07. Wis. Admin. Code §DCF 201.07(1)(e) provides that a child care provider can appeal, among other actions, collection of overpayments including that determination of the amount of the overpayments.

Wis. Admin. Code §DCF 201.04(5)(b) provides as follows:

(b) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible or overpayments caused by administrative error that benefited the provider. A provider shall be responsible for an overpayment if both of the following criteria are satisfied:

1. The overpayment benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements.
2. The overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

The Child Day Care Manual, Chapter 1, §10.3.0, tells the agency to recover from a provider when:

1. The provider recorded incorrect hours on the attendance form which caused an overpayment.
2. Generally when the worker entered incorrect authorization or provider information or failed to act on reported information resulting in an authorization related overpayment.
3. The child was authorized for an incorrect number of hours and this caused an overpayment.
4. The provider did not report to the local agency when a child stopped attending day care.

The county found that petitioner was overpaid because she recorded incorrect hours for several children in care on multiple occasions, claiming significantly more in payments than her available records documented (i.e., contemporaneous on-site attendance records or “sign-in/sign-out logs”). The representative testified that the agency workers reviewed the attendance forms and compared them to the claims for payment submitted by the petitioner, finding multiple instances of claiming payment for more than individual children actually attended in the periods of December 28, 2008 – March 7, 2009 (\$2,731.41) and March 8 – May 9, 2009 (\$5,228.32). See, Exhibits #4 & #5. These two overpayment claims total \$8,069.73.

The petitioner replies that her attendance forms did not accurately reflect actual hours of attendance because she had problems getting the parents to sign the form as in or out for their child’s attendance every day. She noted that the attendance form was new, starting to be used in January, 2009, and she asserted that she had not been trained in the use of the form. She opined that this caused her to fail to utilize it properly and record only actual attendance as acknowledged or checked by her, an employee or a parent for each day’s attendance. She asserted that all the children for whom she claimed payment *did* actually attend. Finally, she claimed that she, and her employees, kept a separate “schedule” record keeping system on which they recorded actual attendance for each child. These schedules then could be used by the provider to generate individual bill invoices for individual children in care, i.e., a third attendance recording form of data. See, Exhibits #5, #10 and see Exhibit #8. She testified that she offered these additional records to the agency, but the agency refused to accept them.

To this, the agency representative replied that *no* overpayments were found that were grounded upon the failure of a parent to sign the attendance logs. Rather, the computation of the overpayment was solely based upon the hours of attendance recorded on the form versus the claims for payment. Worker Homp also indicated that attendance is required to be recorded on the forms produced by the Department, and that is why the agency declined to accept the other forms of attendance data.

Wis. Admin. Code §DCF 250.04(6)(a) provides that the provider shall maintain a current written record on each child enrolled, and shall make the record available to the licensing representative upon request. Wis. Admin. Code §DCF 250.04(6)(b) provides that the licensee “shall maintain a current, accurate written record of the daily attendance *on a form prescribed by the department* that includes the actual time of arrival and departure for each child for the length of time the child is enrolled in the program.” (Effective December, 2008; italicized for emphasis.)

In a Fair Hearing concerning the propriety of an overpayment recovery determination, such as this, the county agency has the burden of proof to establish by the preponderance of the evidence in the record that the action taken was correct given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence. In short, the agency must demonstrate that it is "more likely than not" that it has correctly determined an overpayment occurred.

This was a hotly contested case. Both parties asserted their positions with passion. I have reviewed the evidence presented very carefully.

The "preponderance of the evidence" presented in this record establishes that the county agency has correctly found that the petitioner was \$8,069.73 in child care payments, and she has not effectively rebutted this finding. Her primary defense is that she was unfamiliar with the form, and that parents did not sign in and out correctly. The agency, however, made it clear that it was not the lack of signatures that generated the overpayment, but the claims for payment of child care funds unsupported by a comparison with the hours of attendance actually recorded on the form. Otherwise, the petitioner asserted vigorously that other records, and the testimony of the several parents who attended the hearing with her, establish that the children actually attended for the times for which she was paid.

Child care providers are required to keep on-site accurate records of attendance for licensing purposes, and for payment purposes. Large amounts of precious public assistance are paid to child care providers for the cares they provide. Any person operating a child care center must operate in an organized business-like manner and be prepared and able to document exactly who the children in care are, when, and for how long, in order to properly be paid. The petitioner's business records may be adequate for internal staffing and client billing purposes, but the attendance reported on the Department-prescribed and legally mandated forms were, at best inaccurate, and at times sloppy, and incomplete, with omissions. The law directs the use of this form by the Department and the provider. Wis. Admin. Code §DCF 250.04(6)(b). The ancillary secondary evidentiary sources of attendance, even if they had been clear, complete and seamless (which they were *not*) would in any event be insufficient to override the required attendance reports on the prescribed form for doing so. In fact, the petitioner's exhibits were unpersuasive due to incompleteness. See, Exhibits #10 & #8. The reported internal "schedules" provided were primarily from December, 2008, with only a limited and spotty production for sporadic days in February – May, 2009. Rather, there was submitted a veritable jumble of different calendars with multiple colored pen & pencil notes, Provider Attendance sheets with handwritten notations, and billing records for two attending families when there were 5, or more, families with children in care in the overpayment test periods.

These secondary sources do not produce a clear picture of child attendance at this day care. This case demonstrates exactly why attendance must be reported in the Department's mandated form, and why the claims for payment must reflect the attendance reported. With hundreds of providers operating in the State of Wisconsin, it is not possible to use the idiosyncratic business practices of each individual provider to account for the numbers, and hours, of children in care. Rather, to do business as a child care provider and receive payment from Wisconsin Shares, the provider must use the Department's attendance reporting form, and must accurately claim payment only for attendance so recorded. Period.

The overpayment determination must be sustained on this record.

(2) Whether the county agency correctly suspended the child care provider from child care payment authorization for six months.

Wis. Admin. Code § DCF 201.04(5)(c) provides as follows:

(c) If a child care administrative agency has given notice to a provider that the provider is in violation of licensing or certification rules and the provider has not corrected the violation or if the provider submits false attendance reports, refuses to provide documentation of the child's actual attendance, or gives false or inaccurate child care price information, the child care administrative agency or department may take one or more of the following steps:

- (1) Refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months.
- (2) Revoke existing child care authorizations to the provider until the provider has corrected the violation.
- (3) Refuse to issue payments to the provider until the provider has corrected the violation.

In this case, I have concluded, above, that the petitioner was overpaid Wisconsin Shares reimbursements due to claims for payment that exceeded documented attendance. Wis. Admin. Code §DCF 250.04(6)(b) provides that the licensee "shall maintain a current, accurate written record of the daily attendance *on a form prescribed by the department* that includes the actual time of arrival and departure for each child".

In the sense of the word "false" as being untrue or incorrect documentation of actual attendance and incorrect child care price information addition, the agency is granted the discretion to refuse to issue new child care authorizations for six months. In addition, a violation of child care rules likewise justifies exercise of the discretionary authority to impose the 6 months suspension. The failure to maintain a current accurate record of attendance is evident by the conclusion that the provider claimed payment for hours in excess of rule-mandated documented attendance on the prescribed form. This is a violation of program rules, as the agency informed her. See, Exhibit #2. Based upon that fact, I can only conclude that the county agency has correctly suspended the petitioner for six months.

CONCLUSIONS OF LAW

- (1) The county correctly determined that petitioner was overpaid \$8,069.73 in child care funds because she made repeated claims for payments in excess of the hours of attendance in the time period of December 28, 2008, through May 9, 2009, and did not document with contemporaneous and accurate regularly completed attendance logs the actual hours of attendance by children, as set forth in Exhibits #5 & #4.
- (2) The county agency correctly imposed a six month suspension of the child care provider's authorization for payment imposed from December 5, 2009, through June 5, 2010, due to program violations.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein is dismissed, if and only if, this Proposed Decision is adopted by the Secretary of the Department of Children and Families in a Final Decision.

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 Children and Families 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
Madison, Wisconsin, this _____ day
of _____, 2010.

Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
624/KDD

cc: