



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

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In the Matter of

DECISION

Peterson's Playmates Child Care Center

ML-10-0023

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Pursuant to petition filed October 9, 2009, under Wis. Admin. Code, § DCF 201.01(1)(c), to review a decision by the Department of Children and Families, a hearing was held on February 11, 2010, at Milwaukee, Wisconsin. The record was held open to receive a stipulation on certain facts from the parties, and it was received on April 23, 2010.

The issues for determination are: 1) whether DCF correctly refused to pay Wisconsin Shares program payments to the provider effective September 19, 2009 based on reasonable suspicion of program violations alleged to consist of reimbursement requests that did not accurately correspond to attendance records, and 2) whether DCF correctly determined that the provider was overpaid in the amount of \$4,240.93 as a result of inaccurately reporting attendance.

There appeared at that time and place, the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Peterson's Playmates Child Care Center, by

Attorney Mark A. Sweet  
Sweet and Associates, LLC  
2510 East Capitol Drive  
Milwaukee, WI 53211

Respondent:

Department of Children and Families, by

Attorney Eric J. Volkmann  
Department of Children and Families  
Office of Legal Counsel  
201 East Washington Avenue, 2nd Floor  
Madison, WI 53703

Administrative Law Judge:

Patrick T. Currie  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County who operated one family child care center.
2. The center, located at 2539 N. 44<sup>th</sup> Street, Milwaukee, Wisconsin, was licensed to provide care for children from 6:00 a.m. to 12:00 a.m., Sunday through Saturday.
3. The facility is licensed to care for eight children.
9. DCF audited the sign-in/sign-out sheets along with the Child Care Attendance Reports (Exhibit 7) and concluded that there were discrepancies between the hours attended from the sign-in/sign-out sheets and the hours reported to DCF for billing purposes for the week beginning September 27, 2009.
10. The provider submitted billing records for the week beginning September 27, 2009 that billed DCF for hours in excess of those documented in attendance records for that week.
11. DCF notified the provider on December 16, 2009 that it refused to make Wisconsin Shares payments to the provider, effective December 5, 2009 because it determined that the providers "sign in /sign out records did not consistently match the hours billed to Wisconsin Shares.

### **DISCUSSION**

Wisconsin Stat. § 49.155 provides the legal basis for the Wisconsin Shares program. The program pays state subsidies to child care providers on behalf of low income parents and children. Petitioner operated child care centers in which all children under her care were eligible for and received child care subsidies through the Wisconsin Shares program.

Wisconsin Stat. § 49.155(7)(a) provides as follows: "The department or the county department under §§ 46.215, 46.22 or 46.23 may refuse to pay a child care provider for child care provided under this section if any of the following applies to the child care provider, employee or person living on the premises where child care is provided: ... 4. The department or county department reasonably suspects that the person has violated any provision under the program under this section or any rule promulgated under this section."

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. Wisconsin Admin. § 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."

The second issue is whether the overpayment associated with the above record inaccuracies was computed correctly.

Wisconsin 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.

Agencies are required to take all reasonable steps necessary to recover any overpayments made for child care services in a number of circumstances, among them when the provider recorded incorrect hours of attendance which caused an overpayment. This applies to both enrollment and attendance based authorizations.

### **CONCLUSIONS OF LAW**

1. The Division had reasonable suspicion that petitioner violated program provisions or rules, by failing to maintain accurate attendance and billing records, between September 27, 2009 and October 4, 2009 and thus correctly suspended Wisconsin Shares payments.
2. The Division incorrectly determined the overpayment to the provider for the week beginning September 27, 2009.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Wisconsin Statutes § 227.49. A copy of the statutes can found 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 no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, 2nd Floor, Madison, Wisconsin, 53703.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to circuit court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

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Patrick T. Currie  
Administrative Law Judge  
Division of Hearings and Appeals