



STATE OF WISCONSIN
Department of Children and Families

In the Matter of

Kiddie Springs Child Development Center

FINAL DECISION

ML-09-0249

PRELIMINARY RECITALS

Pursuant to a petition filed on September 8, 2009, under Wis. Stat., §48.72, to review a decision by the Division of Early Care and Education (Division) to revoke a group day care license, a hearing was held on December 2, 2009 at Milwaukee, Wisconsin.

The issue for determination is whether the department correctly revoked petitioner's group day care license.

PARTIES IN INTEREST:

Petitioner:

Latasha Jackson
Kiddie Springs
3718 W. Lancaster Ave.
Milwaukee, WI 53209

Represented By:

Atty. Rodney L. Cubbie
3333 N. Mayfair Rd., Ste. 312
Wauwatosa, WI 53222

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

By: Atty. Debra Bursinger

EXAMINER:

Brian C. Schneider, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is the operator of a group day care center in Milwaukee County.
2. By a notice dated August 27, 2009, the Division informed petitioner that it was revoking her day care license because of a finding that she "collected public assistance benefits and failed to properly report all sources of income and/or assets," thereby making her unfit and not qualified to operate a day care center under Wis. Adm. Code, §DCF 251.03(11g). See Exhibit R-1.
3. The Division amended its revocation basis by a notice dated September 1, 2009. The amended notice added as a second revocation basis that petitioner incurred a \$103,546.93 overpayment as the operator of the day care center.
4. Petitioner received Food Share benefits in Waukesha County prior to opening this facility. On March 24, 2008, she signed a Disqualification Consent Agreement to a one-year suspension from the Food

Share program following allegations by the county agency that she received benefits unlawfully by intentionally misleading or withholding facts. See Exhibit R-6. Due to an administrative error, news of the disqualification did not reach the state licensing agency when it was considering petitioner's day care application.

5. In spring, 2009, the Milwaukee County Dept. of Human Services received a complaint that petitioner was committing fraud at her child care center. The county investigated the complaint by going to the center on April 1 and collecting copies of attendance sheets for the period November 30, 2008 through March 28, 2009.
6. By a notice dated August 31, 2009, the county informed petitioner that she was overpaid \$103,546.93 in child care payments. The county's specific reason for the overpayment claims was that the parents did not sign the attendance sheets. See Exhibit 13, page one and following pages; see also Exhibit 8, pp. 1-31.
7. Petitioner claimed payments for three weeks of care for a child who did not attend her center during that time.

DISCUSSION

Pursuant to Wis. Stat., §48.715(4)(b) and Wis. Adm. Code, §DCF 251.11(7)(a)7 and (7)(b), the department may revoke a group day care license if the licensee has committed a substantial violation of a rule promulgated under Wis. Stat., §48.67, has violated any provision of the administrative code or statutes, fails to meet the minimum requirements of the code and statutes, or is not fit and qualified. Specifically, Wis. Adm. Code, §DCF 251.11(1)(d) provides that the operator of a day care center shall be a responsible, mature individual who is fit and qualified. Wis. Adm. Code, §DCF 251.03 (11g) defines "fit and qualified" to mean "displaying the capacity to successfully nurture and care for children and may include consideration of any of the following: ... (b) A history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children, as described in ch. DHS 12, ... (d) A history of civil or criminal offenses or any other action that demonstrate an inability to manage financial resources or the activities of a center."

The Division sought to revoke petitioner's group day care license for two reasons. First, in March, 2008, petitioner agreed to a one-year Food Share disqualification and Wisconsin Works (W-2) strike pursuant to a Disqualification Consent Agreement entered into with Waukesha County. That agreement, the Division asserts, shows that petitioner violated federal laws "by withholding and/or misrepresenting facts related to her eligibility for public assistance programs." Exhibit R-1, page 2. Second, petitioner submitted inaccurate attendance records to the Department.

On the first issue, the Disqualification Consent Agreement that petitioner signed indicated, in part:

We believe you received Wisconsin Works, Aid to Families with Dependent Children (AFDC), and/or FoodStamp payments or benefits to which you were not entitled by:

- a) intentionally making a false or misleading statement;
- b) intentionally misrepresenting or withholding facts;
- c) committing an act intending to mislead, misrepresent, or withhold facts.

R-6. The Agreement also states, "I understand that by agreeing to disqualification, the disqualification penalty or penalties described above will be imposed and I am waiving my right to an Administrative Disqualification Hearing." R-6.

Under federal law, a Food Stamp agency may not ask a person to sign the Disqualification Consent Agreement or schedule a disqualification hearing unless it has documentary evidence that the household deliberately broke Food Stamp Program rules. 7 C.F.R. §273.16(a)(1). The Food Stamp Agency may not ask a person to sign a Disqualification Consent Agreement, unless a person other than the regular caseworker – usually an investigator – has reviewed the evidence and has decided that the evidence is strong enough for the food stamp program to schedule a disqualification hearing. 7 C.F.R. §273.16(f)(1)(i).

The Division attempted to introduce Exhibit R-5, which is a group of documents compiled and created by the Waukesha County agency in support of its claims against petitioner. Petitioner objected to the Exhibit as being hearsay; the administrative law judge sustained the objection.

I believe that it was error to exclude Exhibit R-5. Wisconsin Stat. §227.45(1) states, in part:

Except as provided in s.901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s.901.05.

The documents from the Waukesha County Department of Health and Human Services have reasonable probative value and were not immaterial, irrelevant or unduly repetitious.

The Disqualification Consent Agreement signed by petitioner is persuasive evidence that petitioner intentionally misrepresented facts to obtain public benefits to which she was not entitled. Exhibit R-5 provides a context for the Agreement and strengthens the evidentiary value of the Agreement. Because Exhibit R-5 has “reasonable probative value,” it is not improper to consider this evidence. Moreover, the record contains no evidence that would undermine the reliability or persuasiveness of the Division’s evidence. There is no evidence in the record that Waukesha County Department of Health and Human Services acted in violation of federal law by presenting the Agreement to petitioner without substantial evidence of this misconduct. There is no evidence in the record to contradict the evidence that petitioner did, in fact, withhold or misrepresent facts in order to collect public assistance.

In the amended Notice of Revocation, the Division also indicated that Milwaukee County Department of Health and Human Services had identified \$103,546.93 in overpayments, due to petitioner’s failure to comply with the requirements of Wis. Admin. Code ch. DCF 201. R-2. Failing to comply with this chapter is in violation of Wis. Admin. Code §§ DCF 251.04(2)(a) and (c), which require licensees to comply with all laws governing the facility and its operations and to ensure that all information is current and accurate.

The Division provided evidence that attendance sheets that petitioner submitted to the Department were not current and accurate and that petitioner was overpaid. The petitioner admits to claiming reimbursement for three weeks of care for a child who did not attend during that time. As discussed in the companion case ML-09-0256, the extent of irregularity in the attendance sheets and Wisconsin Shares reimbursement claims has not yet been resolved. Although the amount of the overpayment may be in dispute, the fact that petitioner was overpaid because she provided inaccurate information to the Department has been established.

The administrative law judge acknowledged that petitioner billed for three weeks for a child who did not actually attend during that time, but made the following determination with respect to that evidence: “Given the size of the day care center, I cannot conclude that erroneously billing for three weeks for a child mandates revocation of the license.” I disagree. Accurately tracking which children are in care and appropriately billing for that care are essential duties for child care providers. Further, the Division’s action was not based solely on the fact that petitioner charged the state for three weeks of child care for a child who did not attend the daycare. In the instant case, the Division, in making the determination that petitioner was not fit and qualified to be a licensed provider, relied not only on evidence related to inaccurate record keeping, but also on the Disqualification Consent Agreement, which petitioner signed and which was based on Waukesha County’s conclusion that petitioner received AFDC and/or Food Stamp payments or benefits to which she was not entitled.

Based on the evidence set forth above, the Division properly determined that petitioner is not fit and qualified to be licensed to provide child care and petitioner has failed to comply with the rules governing the program. Hence, the Division acted properly in revoking petitioner’s license.

CONCLUSIONS OF LAW

Petitioner failed to comply with the laws and requirements of the Wisconsin Shares child care subsidy program and has otherwise engaged in misconduct demonstrating that she is not fit and qualified to operate a group child care center, and therefore the Division properly revoked her license.

NOW, THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final fair 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 as “PARTIES IN INTEREST” in the proposed decision. Your request must explain what mistake the examiner 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 be 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 a 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" names in the proposed 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 May, 2010.

Ron Hunt, Division Administrator
Department of Children and Families