



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Renee's Baby Nirvana

ML-09-0366

Pursuant to a petition filed on October 20, 2009, under Wis. Admin. Code § DCF 201.01(1)(c), to review a decision by the Department of Children and Families (the "Department") to refuse to make Wisconsin Shares payments to a child care provider, a hearing was held on March 30, 2010, at Waukesha, Wisconsin. The record was held open until April 16, 2010 to allow the parties to file post-hearing briefs.

The issue for determination is whether the Department correctly refused to make Wisconsin Shares payments to Petitioner Velma McKnuckles' day care center based upon reasonable suspicion of program violations.

PARTIES IN INTEREST:

Petitioner:

Renee's Baby Nirvana, by

Attorney Teresa C. Mambu-Rasch
Sweet and Associates, LLC
2510 East Capitol Drive
Milwaukee, WI 53211

Respondent:

Department of Children and Families, by

Attorney Nancy Wettersten
Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Sally Pederson
Division of Hearings and Appeals

FINDINGS OF FACT

1. On July 1, 2008, the Department issued a Child Care Center License to Petitioner to operate a family child care center known as Renee's Baby Nirvana (the "Center") located at 1629 N. 23rd Street, Milwaukee, WI 53205. The license authorized the care of up to 8 children at one time between the hours of 7:00 a.m. to 12:00 a.m., Monday through Saturday. (Exhibit R-2)
2. When applying for a child care center license, child care providers receive copies of the administrative rules which describe the requirements related to maintaining accurate, written attendance records. (Testimony of Beatrice Riojas, Licensing Supervisor)
3. The Department prepared newsletters that it sent to child care providers, including the Petitioner, who participated in the Wisconsin Shares program, informing the providers that they are required to keep accurate and exact attendance records, including the actual arrival and departure times for each child. (Ex. R-7)
4. The Petitioner attested to the accuracy of the Center's attendance records on Child Care Attendance Reports that she signed and submitted. (Ex. R-5)
5. Petitioner was cited for numerous and varied violations of the administrative rules governing the Wisconsin Shares program during visits made by a Licensing Specialist to the Center on October 29, 2008, December 10, 2008, and June 18, 2009. (Ex. R-4) Petitioner completed correction plans to address the violations specified in the noncompliance statements. Among the violations noted during the June 18, 2009 visit, was failure to maintain accurate a daily attendance record because all the hours of arrival and departure of children were not documented. *Id.*
6. In the summer of 2009, the Department identified certain "red flags" regarding the operation of the Center based on certain data submitted by Petitioner. First, the Center exceeded the "red flag threshold" for the average sum paid per "slot" per year by averaging nearly \$16,500 per slot versus the red flag threshold of \$11,000 per slot. In addition, the Center had authorizations for 3.25 children per slot while the threshold for this red flag is 1.5 children per slot, and the Center was reporting attendance in excess of its licensed capacity. As a result of the "red flags," the Department began an investigation into whether Petitioner was in violation of the Wisconsin Shares program. (Testimony of Jim Bates, Section Chief of the Department's Program Integrity Unit of the Bureau of Early Care and Education)
7. As part of the investigation, licensing staff visited the Center on September 25, 2009 and collected daily attendance records. (Ex. R-6) The auditor found substantial discrepancies between the daily attendance records and the Child Care Attendance Reports that had been submitted for Wisconsin Shares payments in that there was no record of attendance for 62% of the children for whom the Petitioner's Center had been reimbursed. (Ex. P-1)
8. On October 2, 2009, the Department issued a letter to the Petitioner stating that, effective October 3, 2009, it was suspending all Wisconsin Shares payments to the Center "based on a reasonable suspicion that you have violated provisions of the Wisconsin Shares program." (Ex. R-3) The Petitioner appealed the Department's suspension decision to this Division.

DISCUSSION

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

Wisconsin Stat. § 49.155(7)(a) provides in part as follows: “The department ... 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.”

Wisconsin Admin. Code § DCF 250.04(2)(c) requires licensees to “[e]nsure that all information provided to the department is current and accurate.” Section 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.”

Petitioner was or should have been well aware of the requirements to keep accurate daily attendance records for the Center. She received notice of these requirements from the Department at the time of license application, during visits from Licensing Specialists, and in newsletters sent out with Program payments. In addition, Petitioner certified that her attendance reporting was accurate on the Child Care Attendance Reports that she signed and submitted.

Between October 29, 2008 and June 18, 2009, the Petitioner was cited for numerous violations of the Wisconsin Shares program requirements, including failure to maintain accurate daily attendance records. (Ex. R-4) The Department did not investigate or suspend the Center based on those violations, but instead went over noncompliance statements and corrective action plans with Petitioner.

Sometime during the summer of 2009, the Department identified a number of “red flag” indicators based on data about the Center that were outside of expected operating parameters. The “red flag” indicators related to the Center receiving revenue beyond the average expected per year per slot and authorizations for more children per slot than was feasible. Jim Bates, Section Chief of the Department’s Program Integrity Unit of the Bureau of Early Care and Education, testified that it would be nearly impossible for a facility that was licensed for 24 hours per day, seven days per week to have 3.25 children per slot authorized, and Petitioner’s Center was only authorized for 17 hours per day, six days per week.

Based upon the “red flags,” the Department initiated an investigation of the Center. During the investigation, a comparison of the daily attendance sheets with the Center’s billing reports revealed serious discrepancies. In fact, it was discovered that there was no record of attendance for 62% of the children for whom the Petitioner’s Center had been reimbursed. The Petitioner did not testify at the hearing or provide an explanation for the discrepancies. These

circumstances provided the Department with a reasonable suspicion that Petitioner had violated program rules.

With the basis for reasonable suspicion established, the only remaining matter for determination is whether the Department reasonably exercised its discretion in deciding that the violations warranted a payment refusal under Wis. Stat. 49.155(7)(a)4, which provides that the Department *may* refuse to make payments of Wisconsin Shares if the Department has a reasonable suspicion the provider has violated program rules. The evidence in support of program violations and the extent of the violations provide ample support for the Department's exercise of its discretion to suspend payments to the Petitioner. The Petitioner did not offer any explanation or compelling reason to reverse or change the Department's decision. I find that the Department reasonably exercised its discretion in suspending payments to Petitioner.

CONCLUSIONS OF LAW

The Wisconsin Department of Children and Families had a reasonable suspicion that Petitioner was violating child care rules and reasonably exercised its discretion in refusing to make Wisconsin Shares payments pursuant to its authority under Wis. Stat. § 49.155(7)(a)4.

NOW, THEREFORE, it is ORDERED

That the petition for review is hereby dismissed.

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.

Sally Pederson
Administrative Law Judge
Division of Hearings and Appeals

