



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Cherethea Blackman
Learning and Leadership Child Development Center
6823 North 41st Street
Milwaukee, WI 53209

**PROPOSED
DECISION**

ML-10-0069

PRELIMINARY RECITALS

On February 1, 2010, pursuant to Wis. Admin. Code § DCF 201.07(1)(c) (March 2009), petitioner filed a petition to review a decision by the Wisconsin Department of Children and Families ["DCF"] to refuse to pay her, pursuant to Wis. Stat. § 49.155(7)(b)4., *as created by* 2009 Wis. Act 76 (Section 37)¹, for child care provided. That request for a Hearing was assigned appeal number ML-10-0069 and is designated as follows: *Learning and Leadership Child Development Center -- North 41st Street (Cherethea Blackman)* [Child Care Provider Payment Refusal]; **ML-10-0069**.

A Hearing on the above matter was held on July 15, 2010 at the Madison office of the Division of Hearings and Appeals ["DHA"].

The issue for determination is whether or not DCF (or the County department) reasonably suspected that the child care provider in this matter (or a caregiver or a non-client resident of the child-care provider) violated any provision under the Wisconsin Work ["W-2"] child care subsidy program or any rule promulgated under that program. See, Wis. Stat. § 49.155(7)(b)4., *as created by* 2009 Wis. Act 76 (Section 37).

PARTIES IN INTEREST:

Petitioner:

Cherethea Blackman
Learning and Leadership Child
Development Center
6823 North 41st Street
Milwaukee, Wisconsin 53209

Represented by:

Felicia Miller-Watson
Miller-Watson Law Office, LLC
Suite 3A
6045 North Green Bay Avenue
Glendale, Wisconsin 53209

¹ 2009 Wisconsin Act 76 was enacted November 13, 2009 and had a date of publication of November 25, 2009. However, Section 37 of 2009 Wisconsin Act 76 [which created section 49.155(7)(b)4.] was effective February 1, 2010. See, 2009 Wis. Act 76 (Section 41). The predecessor law to section 49.155(7)(b)4. of the Wisconsin Statutes was the same in all relevant respects, but was numbered 49.155(7)(a)4. See, 2009 Wis. Act 28 (Section 1214f). NOTE: Subdivision 49.155(7)(a)4. was created as subdivision (7)(d) by 2009 Wisconsin Act 28 and renumbered to subdivision (7)(a)4. by the legislative reference bureau under the authority of section 13.92(1)(bm)2. of the Wisconsin Statutes.

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ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is certified to operate a Family Day Care known as Learning and Leadership Child Development Center ["LLCDC"] located in Milwaukee, Wisconsin. Exhibits #R-1 & #R-2.
2. By a letter dated January 22, 2010 DCF notified petitioner that: "Effective 1/23/10, the Department of Children and Families suspended all Wisconsin Shares payments to your business based on a reasonable suspicion that you have violated provisions of the Wisconsin Shares Program. The suspension was based upon your failure to 1) provide access to the day care facility during your stated hours of operation; and 2) maintain and submit accurate attendance records as required by the Shares program." Exhibit #R-4.
3. In October 2009 petitioner operated over capacity on more than one occasion; this means that petitioner provide simultaneous care for more children than was allowed by her license; DCF noted this in a licensing visit that occurred on October 8, 2009. Exhibits #R-2, #R-6, #R-7, #R-11, #R-14 & #R-16.

DISCUSSION

DCF may refuse to pay a child care provider for child care provided if DCF (or the County department) reasonably suspects that the child care provider (or a caregiver or a non-client resident of the child-care provider) violated any provision under the Wisconsin Work ["W-2"] child care subsidy program or any rule promulgated under that program. See, Wis. Stat. § 49.155(7)(b)4., *as created by* 2009 Wis. Act 76 (Section 37).

The rules governing Family Child Care Centers state that the number of children in the care of a Family Child Care Center at any time may not exceed the number for which the center is licensed. Wis. Admin. Code § DCF 250.04(1)(a). (December 2008). As noted in the above Findings of Fact, petitioner violated

this rule on more than one occasion. Petitioner does not deny this -- in fact, petitioner and her attorney readily admitted this at the July 15, 2010 Hearing in this matter. This is more than sufficient to sustain DCF's reasonable suspicion that petitioner (or any employee or any person living on the premises where child care is provided) violated a provision under the W-2 child care subsidy program or a rule promulgated under that program. Therefore, DCF's refusal to pay petitioner must be upheld.

Petitioner argues that the fact her Family Child Care Center was over capacity in October 2009 does not provide reasonable suspicion for a payment refusal in January 2010. Petitioner argues that the reasonable suspicion ended when DCF issued her a *Noncompliance Statement And Correction Plan* (CFS-0294) in October 2009. See, Exhibit #R-6; page 6. However, the issuance of a formal notice of violation does not serve to extinguish a reasonable suspicion. Rather, it documents DCF's determination that violations actually occurred. Furthermore, the passage of approximately 3 months from the time of the violations to the time of the payment refusal action does not extinguish DCF's reasonable suspicion.² This is especially true in this case since petitioner admits that violations occurred.

Petitioner also argues that she corrected the overcapacity violation by October 30, 2009. However, the fact that petitioner may have corrected the violations that does change the fact that DCF had a reasonable suspicion that violations occurred (in fact, as already noted, violations actually did occur). Finally, petitioner argues that she was told by a government employee that it was "okay" for her to operate her Family Child Care Center in the manner that she did. However, a Family Child Care Center licensee must comply with all rules governing the facility and its operation and must comply with all requirements contained in Chapter DCF 250 of the Wisconsin Administrative Code. Wis. Admin. Code §§ DCF 250.04(2)(a) & (b). (December 2008).

It is not necessary to consider the other reasons DCF alleges for its payment refusal decision (no access during licensing visits; unable to obtain records; red flags). See, Exhibits #R-4 & #R-11, A, B, #C-1 & #C-2.

CONCLUSIONS OF LAW

For the reasons discussed above, DCF's refusal to pay petitioner must be upheld.

NOW, THEREFORE, it is

ORDERED

That, if this Decision is adopted by the DCF Secretary as the Final Decision, the petition for review herein be and the same 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

² DCF's attorney stated that the payment refusal did not occur earlier because DCF needed time to investigate.

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.

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
07262010/SPM