



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Little Miracles Day Care
c/o Eugenie Taylor
3301 N. 38th Street
Milwaukee, WI 53216

DECISION

ML-09-0040

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2009, under Wis. Stat. § 227.44, to review a decision by the Department of Children and Families, Bureau of Early Care Regulation, a briefing schedule was established pursuant to a prehearing conference held on September 3, 2009. The record was held open until December 1, 2009, to allow the parties sufficient time to submit hearing briefs as well as some additional information; only the hearing brief prepared by the Department was received.

The issue for determination is whether the Department correctly revoked petitioner's child care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Ms. Eugenie Taylor
Little Miracles Day Care
3301 N. 38th Street
Milwaukee, WI 53216

Represented by:

Attorney Michael Verrilli
P.O. Box 170258
Milwaukee, WI 53217-8021

Respondent:

Wisconsin Department of Children and Families
Department of Children and Families
201 E. Washington Avenue, 2nd Floor
Madison, WI 53703

By: Attorney Debra Bursinger

Department of Children and Families – Office of Legal Counsel
201 East Washington Avenue, Room G200
P.O. Box 8916
Madison, WI 53708-8916

ADMINISTRATIVE LAW JUDGE:

Marina Croft
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On January 20, 2009, the Milwaukee County Department of Health and Human Services (DHHS) issued a notice to petitioner informing that it was recovering child care subsidy overpayments in the amount of \$132,609.53 for violations of the child care subsidy program, Wisconsin Shares. The alleged violations included failure to maintain accurate attendance records, operating over maximum licensed capacity, and failure to maintain other required documentation in an accurate manner as required by the laws, rules, policies and procedures promulgated pursuant to Chapter 49, Wis. Stat., and DCF 201, Wis. Admin. Code.
3. On February 3, 2009, petitioner appealed the Milwaukee County DHHS' overpayment determination with the Division of Hearings & Appeals (DHA). A hearing with respect to this issue was held on June 9, 2009.
4. On July 27, 2009, the DHA concluded that petitioner was overpaid \$132,609.53 in child care services which are subject to recovery because she knowingly failed to report and/or inaccurately reported the children's attendance hours, it operated over capacity, and provided false information to the agency to obtain subsidized care.
5. On February 5, 2009, the Department of Children and Families (DCF) issued a Notice of Revocation of a Family Child Care License to petitioner on the grounds that she had violated chapter 48 of the Wisconsin Statutes and DCF 250 of the Wisconsin Administrative Code based upon the alleged violations made by the Milwaukee County DHHS.
6. On February 16, 2009, petitioner appealed the license revocation with the Division of Hearings and Appeals, which is the subject of this decision.
7. On September 3, 2009, a hearing brief schedule was established; the Department had until September 24, 2009 to submit an initial brief; petitioner had until October 14, 2009, to submit a reply; this deadline was extended to November 14, 2009, at petitioner's request

DISCUSSION

Wis. Admin. Code § DCF 250.11 Licensing administration states, in pertinent part, that:

(8) LICENSE DENIAL OR REVOCATION. (a) The department may deny, revoke, or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee, a proposed or current employee, a volunteer or any other person having regular contact with the children is, has or has been any of the following:

1. The subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center.
2. Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.
3. Determined to have abused or neglected a child pursuant to s. 48.981, Stats., or has been determined to have committed an offense which substantially relates to the care of children or the activities of the center.
4. The subject of a substantiated finding of misconduct in the department's nurse aide registry under s. DHS 129.10.
5. The subject of a court finding that the person has abandoned his or her child, has inflicted sexual or physical abuse on a child or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter for his or her child or ward or a child in his or her care so as to seriously endanger the physical health of the child.
6. Had a child care license or certification revoked or denied within the last 5 years.
7. *Violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.*
8. Made false statements or withheld information.

(b) The department may deny, revoke, refuse to renew or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee is not fit and qualified as determined under sub. (2).

(Emphasis added). Wis. Admin. Code § DCF 250.11(8). The above-referenced statute clearly indicates that the DCF has the authority to deny a child care license if the applicant violated *any* provision of chapter DCF 250 or chapter 48. Wis. Stat. § 48.65(1), Wis. Admin. Code § DCF 250.11(8)(a)7.

The DCF argued that petitioner’s license was correctly revoked based upon the previous DHA finding that petitioner violated the rules and regulations of the Wisconsin Shares program for failure to maintain accurate documentation, including attendance records, and operating over licensed maximum capacity, which are substantial violations pursuant to Wis. Admin Code § DCF 250.04(1)(c), DCF 250.04(6)(b), and DCF 250.04(4)(a). The rules are very clear in that *any* violation of Chapter DCF 250 or Chapter 48 is sufficient to revoke the child care license. Therefore, I must conclude that the Department correctly revoked petitioner’s child care license because she violated several provisions of Chapter DCF 250 and Chapter 48, in contravention of Wis. Admin. Code § DCF 250.11(8)(a)7.

CONCLUSION

The Department correctly revoked petitioner’s child care license because she violated several provisions of Chapter DCF 250 and Chapter 48, in contravention of Wis. Admin. Code § DCF 250.11(8)(a)7.

NOW, THEREFORE, it is ORDERED

That the matter is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. You may petition for an administrative rehearing by submitting a specific written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. This request must be received by the Division within 20 days of the date of this Order. The process for requesting a rehearing petition is contained in Wisconsin Statutes § 227.49.

APPEAL TO CIRCUIT 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, WI 53703. The process for appeals to the circuit court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2011.

Marina Croft
Administrative Law Judge
Division of Hearings and Appeals
85/MC