STATE OF WISCONSIN
Department of Children and Families

In the Matter of | PROPOSED DECISION

Little Bear Day Care | ML-09-0305

PRELIMINARY RECITALS

The above-named petitioner requested a hearing request pursuant to Wis. Stat. §227.44 concerning the Department's decision to revoke her family daycare license. The matter was heard in La Crosse, Wisconsin on May 11, 2010.

The issue for determination is whether the Department properly suspended Wisconsin Shares child care payments to the petitioner because there is reasonable suspicion that she violated the program's rules.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Becky Valentine
d.b.a Little Bear Day Care
By: Larry Rodenstine & Silke O'Donnell
AFSCME-CCPT
8033 Excelsior Drive
Madison, WI 53717

Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue
Madison, WI 53708
By: Nancy Wettersten, Attorney

FINDINGS OF FACT

1. Becky Valentine was licensed to operate Little Bear Day Care in La Crosse, Wisconsin.
2. The petitioner received reimbursement for some of the children in her care from the Wisconsin Shares Child Care Subsidy Program.
3. The Department notified the petitioner on September 26, 2009, that it would suspend her child care payments under the Wisconsin Shares program because there was a reasonable suspicion that she violated a provision of the program.
4. The Department revoked the petitioner's child care license on February 8, 2010, because she violated the rules of the program. *Final Decision Nos. ML-08-0269 and 09-0027 by Ron Hunt, designee of the secretary of the Department of Children and Families.*.

DISCUSSION

The petitioner is a child care provider who has received Wisconsin Shares child care subsidies for some of the low-income children in her care. The Department seeks to suspend those subsidies pursuant to Wis. Stat. §49.155(7)(a)4, which states:

> (7) REFUSAL TO PAY CHILD CARE PROVIDERS. (a) The department or the county 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:
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> …
>
> 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.

The Department relies upon its own final decision in *ML-08-0269 and 09-0027* issued on February 8, 2010, as the basis for suspending the petitioner's payments. The decision in that consolidated case revoked the petitioner's day care license because she was found to have violated the Wisconsin Child and Adult Care Food Program, which the Department found meant that she violated Wisconsin Shares rules requiring her to comply with all laws governing her facility. The Department's final decision overturned the Division of Hearings and Appeals' proposed decision finding that the Department could not rely upon the food program decision to revoke the petitioner's day care license because the food program decision gave no findings of fact, conclusions of law, or explanation as to how it reached the result it did. The Department's final decision in *ML-08-0269 and 09-0027* is flawed because it failed to "explain, in a logical fashion based on the record, the reasons why it takes a different view" than the proposed decision. *See Daniels v. Wisconsin Chiropractic Examining Board,* 2007AP1072. *See also* Wis. Stat. § 227.46(2). Despite the flaws in the Department's decision, I am bound by it. Because that decision found that the petitioner's violations provided an adequate basis to find that the Department could revoke the petitioner's license, it also provides an adequate basis to find that the Department has met the much lower burden needed to raise a reasonable suspicion that she has violated a provision under the Wisconsin Shares program. This in turn provides a basis for it to suspend the payments.

I am aware in making this decision that, given that the Department has rewritten every proposed decision submitted to it concerning Wisconsin Shares payments that deviates from its position, the administrative hearing provides petitioners with no meaningful review and as a result no due process. Regardless, it is up to circuit and higher courts, and not me, to determine the propriety of the Department's actions.

The petitioner's representative raised another matter in letters to me and the Department. Those letters point out that at the March 19, 2010, prehearing conference the petitioner agreed to waive the 30-day time limit for holding this hearing if the Department began taking the steps necessary to ensure that she was paid for the child care she had already provided. The Department's attorney, Nancy Wettersten, agreed. The clear implication from Ms. Wettersten's assurances was that this process would begin immediately. As of today, the Department has not begun the process and gave the petitioner no assurance as to when it would do so. I have no equitable powers that give me the authority to dismiss this matter as the petitioner requested; nor do I have the power to find the Department in contempt. But for what it is worth, I find the petitioner's version of what occurred accurate.

CONCLUSIONS OF LAW

That the Department can suspend child care payments to the petitioner because there is a reasonable suspicion that she violated a provision of the program.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed if approved by the designee of the secretary of the Department of Children and Families.

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 IMPLMENTED 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

Given under my hand at the City of Eau Claire, Wisconsin, this _____ day of _____, 2010.

_____

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
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