



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

DECISION

**Alexis House Daycare**

ML-09-0317

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On October 7, 2009, the petitioner filed a hearing request pursuant to Wis. Stat. § 227.44. The petitioner contests the authorization/payment refusal action reflected in a notice issued by the Wisconsin Department of Children and Families (Department) on September 21, 2009. Following a prehearing conference, a hearing was conducted on March 12, 2010, at Milwaukee, Wisconsin.

There appeared at that time and place, the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Alexis House Daycare, by

Attorney Peter Swinford  
AFSCME District Council 48  
3427 West St. Paul Avenue  
Milwaukee, WI 53208

Respondent:

Department of Children and Families, by

Attorney Nancy Wettersten  
Department of Children and Families  
201 East Washington Avenue, 2nd Floor  
Madison, Wisconsin, 53703

Administrative Law Judge:

Sally Pederson  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is licensed as a child care provider, located in Milwaukee County, Wisconsin.
2. On September 21, 2009, the Department of Children and Families (Department) issued a letter to the petitioner. That letter declared that the Department was refusing to make CC payments from September 22, 2009, forward, "based on a reasonable suspicion that you have violated provisions of the Wisconsin Shares program." The violated provisions are not identified, and no factual allegations are made in the letter. The authorizing statute for the action Wis. Stat. §49.155(7)(a)4. See Exhibit R. The petitioner then appealed to this Division.

## DISCUSSION

### I. INTRODUCTION

The petitioner is a child care provider. Some parents of the children in the petitioner's care are eligible for the Wisconsin Shares child care (CC) subsidy due to low income. On September 21, 2009, the Department issued a notice to the petitioner declaring that the Department was refusing to make CC payments to the petitioner from September 22, 2009, forward.

The Department initiated its action by relying upon the following statutory provision:

**(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:

1. The person has been convicted of a felony or misdemeanor that the department or county department determines substantially relates to the care of children.

2. The person is the subject of a pending criminal charge that the department or county department determines substantially relates to the care of children.

3. The person has been determined under s. 48.981 to have abused or neglected a child.

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.*

*(emphasis added)*

No code language has been promulgated to provide direction in the implementation of Wis. Stat. § 49.155(7)(a)4. Less significantly, no published policy has been prepared by the Department regarding implementation of (a)4.

### II. REASONABLE SUSPICION OF VIOLATION.

Per statute, a provider must maintain records that show each child's arrival and departure times:

**(6m) Child care provider recordkeeping.** With respect to attendance records, a child care provider shall do all of the following:

(a) Maintain a written record of the daily hours of attendance of each child for whom the provider is providing care under this section, including the actual arrival and departure times for each child.

Wis. Stat. §49.155(6m(a)). This petitioner violated this requirement. Thus there was reasonable suspicion that the petitioner violated a provision of Wis. Stat. §49.155 on the dates of

## CONCLUSIONS OF LAW

NOW, THEREFORE, it is

ORDERED

**REQUEST FOR A REHEARING**

This is a final 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 in this decision as "PARTIES IN INTEREST." Your request must explain what mistake the Administrative Law Judge 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 Wis. Stat. § 227.49. A copy of the statutes can 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 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" named in this 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 \_\_\_\_\_, 2010.

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Sally Pederson  
Administrative Law Judge  
Division of Hearings and Appeals