



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

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In the Matter of

PROPOSED DECISION

**SN Learning Center**

ML-09-0424

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On November 10, 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 October 25, 2009. Following a prehearing conference, a hearing was conducted on February 9, 2010, at Waukesha, Wisconsin.

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

**PARTIES IN INTEREST:**

Petitioner:  
SN Learning Center  
5328 North Loverslane Rd., Apt. 249  
Milwaukee, WI 53225, by

Attorney Bridget Krause  
Kim & LaVoy, SC  
2505 N. 124<sup>th</sup> Street, Suite 220  
Brookfield, Wisconsin 53005

Respondent:  
Department of Children and Families, by

Attorney Jennifer Wakerhauser  
Department of Children and Families  
201 East Washington Avenue, G200  
Madison, Wisconsin, 53703

Administrative Law Judge:  
Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is licensed as a child care provider, located in Milwaukee County, Wisconsin.
2. The center, located at 4429 W. North Avenue, Milwaukee, Wisconsin, is licensed to operate 24 hours each day, Monday through Friday.
3. The provider was targeted by the Department of Children and Families (DCF) because of “red flags” consisting of a larger than usual income per child per year; a larger than usual number of children per slot; and a larger than usual number of hours billed per week.

4. On November 6, 2008, based on an on-site visit by licensing specialist John Roso at 3:00 p.m., the provider was cited by DCF for failing to keep accurate attendance records. Some children did not have completed files available for review and the daily attendance records did not accurately reflect the children in care. (Exhibit R-4)
5. On September 30, 2009, Roso visited the provider's facility and requested all sign-in/sign-out records for inspection. He issued a noncompliance statement and correction plan citing the provider for a number of violations unrelated to attendance records. He reviewed the records provided to him but did not retain them. He was unable to state whether the documents in Exhibit P-1 were documents that he reviewed or whether he was provided with complete records for the period from July, 2009 through September, 2009. It was not Roso's practice to document missing records, rather he reviewed the attendance records provided to him. (Exhibit R-4)
6. On October 13, 2009 investigator Edward O'Brien visited the provider's storefront facility at approximately 3:30 p.m. and found three children present along with an employee who identified herself as Amelia Mitchell. Mitchell did not make the sign-in/sign-out sheets available for inspection upon request, stating that the licensee, Santana Nettles kept them with her.
7. On October 13, 2009 while at the facility O'Brien spoke to Nettles by telephone who stated that all sign-in/sign-out sheets were with her, including those for October 13, 2009.
8. On October 25, 2009, the Department of Children and Families (DCF) issued a letter to the petitioner. That letter declared that the Department was refusing to make CC payments from October 26, 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.
9. On November 10, 2009, Nettles contacted James Bates by mail to state that she could provide the attendance records for July, but did not do so. (Exhibit R-9)
10. On December 30, 2009 Roso drove by the provider's facility and saw an eviction notice on the door and got no answer at the door. (Exhibit R-11)

## **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 October 25, 2009, the Department issued a notice to the petitioner declaring that the Department was refusing to make CC payments to the petitioner from October 26, 2009, forward.

The Department initiated its action by relying upon Wis. Stat. § 49.155(7)(a)4 which provides that DCF may refuse to pay a child care provider for child care provided if, among other things, 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.

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. Specifically the provider must 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)). Wis. Admin. Code § DCF 201.04(6)(d) requires that the

provider have attendance records available at the child care site whenever the DCF asks to review them. DCF 201.04(6)(e) authorizes DCF to make on-site inspections to monitor the provision of services. Wis. Stat. § 49.155(6m).

Nettles' testimony that on October 13, 2009 she told investigator O'Brien by telephone that the records she had with her were "blank records" and that she informed him that all records for days prior to October 13, 2009 were at the facility where he was calling from was found not to be credible. There is no reason she would need to travel back to the facility to meet O'Brien to show him blank forms. There is no reason she would have to travel back to the facility to show O'Brien that the records were present, when she had an employee on site who could have shown them to him, if the records had been there.

O'Brien's report was written shortly after his visit and is detailed and internally consistent. He has no known motive to report false information. His report described a plausible course of events including his conversation with Nettles' employee and his conversation by telephone with Nettles. His report that no records were available is consistent with the facts at the time of hearing, including the fact that Nettles was never able to produce any records for periods of time prior to September, 2009. O'Brien's written report and testimony were found to be credible.

Nettles wrote to James Bates several weeks after O'Brien's visit on October 13, 2009 and offered to provide the sign-in/sign out sheets for July, August and September, 2009. DCF was under no obligation to contact Nettles in response, or to re-request the records. In order to enforce the relevant rules regarding attendance records, it is understandably of little use to the Department to have records provided weeks or months later, during which time the provider can fabricate records whose accuracy can not be evaluated with any degree of certainty. Further, even if the records were accurate, it would greatly hinder the efficiency of enforcement to require the Department to continue to re-request weeks or months after its initial site visit.

Nettles further testified that the sign-in/sign-out sheets requested by O'Brien and covering the period from January, 2009 to August, 2009 were available at the time of his request on October 13, 2009 but no longer available on the hearing date because she was evicted from the facility without notice and the records were locked up and unavailable to Nettles thereafter. She further explained that at the time of her eviction she had sign-in/sign-out sheets for September, 2009 and October, 2009 with her outside the facility and that the documents submitted as Exhibit P-1 are those sign-in/sign-out sheets, accurately reflecting attendance from September 7, 2009 through October 2, 2009. Her testimony on these points was not found to be credible. By far the best explanation for series of unlikely events described by Nettles, culminating in an illegal eviction and seizure of records from Nettles by a moving company, is that Nettles needed an excuse for the permanent absence of accurate attendance records regarding her child care center.

In summary, Nettles failed to have Daily Attendance Records on site for inspection on October 13, 2009 as required by DCF 201.04(6)(d). There are no acceptable excuses for failing to do so. Even if the reasons cited by Nettles constituted valid reasons for not making the documents available, her self-serving and uncorroborated testimony purporting to explain the absence of records was not believable to any extent. The Daily Attendance Record forms submitted as part of Exhibit P-1 could have been fabricated at any time between October 13, 2009 and February 5, 2009, the date they were filed with the Division prior to hearing. They do not appear to be accurate records, having suspicious characteristics such as consistent handwriting and unvarying in and out times. I am persuaded by the entirety of the evidence that these forms are not accurate records.

This petitioner clearly violated the requirement to have sign-in/sign-out sheets (Daily Attendance Record forms) available on site for inspection upon the request of DCF. There was reasonable suspicion that the petitioner violated a provision of Wis. Stat. § 49.155 on October 13, 2009.

**CONCLUSIONS OF LAW**

DCF had reasonable suspicion that the provider violated program rules. She failed to have any attendance records whatsoever available for inspection on request on October 13, 2009, in violation of Wis. Admin. Code § DCF 201.04(6)(d).

**NOW, THEREFORE, it is ORDERED**

That the petition herein be dismissed in its entirety.

**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.

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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals