



**STATE OF WISCONSIN**  
**Department of Children and Families**

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In the Matter of

FINAL DECISION

Hawkins Family Child Care Center

ML-09-0503

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On December 18, 2009, the petitioner filed a hearing request pursuant to Wis. Stat. § 227.44. The petitioner contests notice of overpayment in the amount of \$18,781.63 from the Wisconsin Shares Child Care program which was noticed in correspondence dated November 24, 2009. Following a prehearing conference, a hearing was conducted on February 16, 2010, at Madison, Wisconsin before Robert G. Pultz, Administrative Law Judge, Department of Administration, Division of Hearings and Appeals.

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

**PARTIES IN INTEREST:**

Petitioner:

Hawkins Family Child Care Center  
Rosalind Hawkins  
4151 North 51<sup>st</sup> Street  
Milwaukee, Wisconsin, 53216

Represented by,

Attorney Craig R. Johnson  
Sweet and Associates, LLC  
2510 East Capitol Drive  
Milwaukee, WI 53211

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

Respondent:

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

Represented by,

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

### **FINDINGS OF FACT**

1. The petitioner is licensed as a child care provider, located in Milwaukee County, Wisconsin.
2. On November 24, 2009, the Milwaukee County Department of Human Services issued an overpayment letter to the petitioner. The letter notified Petitioner that Milwaukee County intended to pursue recovery of \$18,781.63 in alleged overpayments under the Wisconsin Shares program. The authorizing statute for Wisconsin Shares is Wis. Stat. §49.155.
3. Petitioner appealed to this Division on December 18, 2009.
4. The Wisconsin Department of Children and Families (DCF) subsequently assumed responsibility for this Milwaukee County overpayment enforcement action.
5. Petitioner failed to provide the Shares Program with attendance records for the period of October 19, 2008 to October 31, 2008 resulting in an overpayment of \$8,042.22.
6. Hawkins Family Child Care Center (HFCCC) is licensed to care for a maximum of eight children at any one time.
7. Petitioner provided attendance records to the State Legislative Audit Bureau establishing HFCCC had during certain hours of operation from September 7, 2008 to October 4, 2008 operated over its licensed capacity of eight children. During the audit period, HFCCC during certain dates and hours had between nine and thirteen children in child care status.
8. Respondent calculated an overpayment for the period of time HFCCC operated overcapacity to include the aggregate of children in the care of HFCCC.
9. As a result of overcapacity the Department asserts Hawkins Family Day Care Center received an overpayment in the amount of \$3,115.22.
10. The total amended amount of overpayments for both issues claimed by the DCF is \$11,157.44.<sup>1</sup>

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<sup>1</sup> It is not clear from the record submitted how the original figure of \$18,781.63 was amended.

## DISCUSSION

### **1. Did HFCCC fail to produce attendance records for the period between October 19, 2008 to October 31, 2008 resulting in an overpayment of \$8,042.22?**

The petitioner is a licensed 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 9, 2009 Milwaukee County Department of Human Services requested attendance records, sign-in and sign-out sheets, from HFCCC for the period between September 7, 2008 to October 31, 2008. Wis. Stat. § 49.155(6m) requires child care providers to: "*maintain a written record of the daily attendance hours of attendance of each child for who the provider is providing care*". The attendance records were eventually provided except for the period between October 19 to October 31, 2008. At hearing, HFCCC conceded it did not provide the records for the latter period of time. Thus, it is undisputed that HFCCC received an overpayment from the Shares program in the amount of \$8,042.22.

### **2. Did HFCCC operate overcapacity during the period between September 7 to October 4, 2008, resulting in an overpayment?**

The Department established that petitioner claimed payment for more than eight children at certain times, although petitioner is only licensed to care for a maximum of eight children. This is a clear violation of petitioner's child care license.

Wis. Admin. Code § DCF 201.04 (5) (b) provides that the:

*... agency shall take all steps necessary to recoup or recover from a provider any overpayment for which the provider was responsible or overpayments caused by administrative error that benefited the provider.*

Any period where more children are in status that allowed by the provider's license would constitute cause for finding an overpayment occurred, because the provider would be operating beyond the explicit parameters of its legal authorization.

HFCCC was licensed to provide and consequently receive reimbursement for no more than eight children at any one time by the terms and condition of its license to operate. (Ex. R-2) During the time period involved here HFCCC on various days and during various hours had nine to thirteen children under its care. (Ex. R-13) Because HFCCC was authorized to be paid for no more than eight children, any number of children in excess of eight for which payment was received is a benefit and constitutes an overpayment. Notwithstanding the lack of a rule delineating what specific actions constitute an overpayment, DCF can enforce the explicit written parameters of the license it issues to a child care provider.

I reject the discussion and analysis in the proposed decision that determines that the Department (or taxpayers) should pay for the care of eight of the children in care at the center during times when the center was operating well above its license capacity. Operating above capacity creates

quality of care and safety issues for all of the children at the center. The center was not lawfully providing care for *any* child when it operated outside the scope of its license and therefore it is not entitled to be paid for any of the care.

Because *none* of the children in the center received care consistent with licensing requirements, the center should not have submitted payment for that care. The Department is acting within its authority to recoup the overpayment for times when the center had more than the licensed number of children in care.

This decision is consistent with previous decisions issued by the Division of Hearings and Appeals. *See e.g.*, ML-08-0321; ML-09-0032. I see no need to depart from this line of reasoning and decision-making here.

The petitioner must repay the amount of \$3,115.22 for care that was billed during times when the center was operating above its licensed capacity.

### **CONCLUSIONS OF LAW**

1. HFCCC failed to provide attendance records for the period of time between October 19 and October 31, 2008 resulting in an overpayment of \$8,042.22 from the Wisconsin Shares Program. HFCCC must repay this amount.
2. HFCCC operated over its licensed capacity during certain hours from September 7, 2008 through October 4, 2008 resulting in overpayments of \$3,115.22 from the Wisconsin Shares Program.

**IT IS HEREBY**

**ORDERED**

That HFCCC shall repay the Wisconsin Shares program \$11,157.44 as a result of its failure to provide attendance records for the period between October 19 and October 31, 2008 and for operating over its licensed capacity from September 7 – October 4, 2008. **IT IS FURTHER ORDERED**, that the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

This is a final fair 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 as “PARTIES IN INTEREST” in the proposed decision. Your request must explain what mistake the examiner 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 Wisconsin Statutes § 227.49. A copy of the statutes can be 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 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, 2<sup>nd</sup> Floor, Madison, Wisconsin, 53703. The appeal must also be served on the other "PARTIES IN INTEREST" names in the proposed 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 April, 2010.

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Ron Hunt, Division Administrator  
Department of Children and Families