



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Little Rascals Child Care Academy II

Case Nos. ML-10-0141 and ML-10-0142

On February 19, 2010, 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 February 12, 2010. Following a prehearing conference, a hearing was conducted on June 23, 2010, at Waukesha, Wisconsin.

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

PARTIES IN INTEREST:

Petitioner:

Little Rascals Child Care Academy II, by

Attorney Felicia Miller-Watson
Miller-Watson Law Office, LLC
6045 N. Green Bay Ave., Suite 3A
Glendale, WI 53209

Respondent:

Department of Children and Families, by

Attorney Eric Volkmann
Department of Children and Families
201 East Washington Avenue, 2nd Floor
Madison, Wisconsin in, 53703

Administrative Law Judge:

Patrick T. Currie
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is licensed as a child care provider, located in Milwaukee County, Wisconsin. The license was issued on October 10, 2008 and authorizes the provider to care for 33 children and to operate from 6:00 am to 11:00 pm on a daily basis. See Exhibit R-4.
2. On February 12, 2010, the Department of Children and Families (Department) issued a letter to the Petitioner. That letter declared that the Department was refusing to make child care payments from February 6, 2010, forward, "based on a reasonable suspicion that you have violated provisions of the Wisconsin Shares program." The letter cited violations of Wis. Adm. Code DCF 201.04(5)(c), DCF 210.04(6)(d), and DCF 201.04(6)(e). The authorizing statute for the action was Wis. Stat. § 49.155(7)(a)4. See Exhibit R-6. The petitioner then appealed to this Division.
3. The February 12, 2010 letter also declared that the Department had determined that the provider was in violation for receiving payment for care that it did not provide, and indicated that the amount of the overpayment was \$1861.07.
4. Licensing specialist Jennifer Brees attempted site visits on November 11, 2008, December 10, 2008, January 20, 2009, February 5, 2009, February 17, 2009, June 9, 2009, June 18, 2009, and August 6, 2009 and was unable to access the facility on any of those visits.
5. Jennifer Brees visited the site on July 21, 2009 and found no children present. She was told by staff that the children had been moved to Little Rascals facility at another location due to a problem with the site's air conditioning unit. She acknowledged the fact of the move and did not cite the provider, but she did not authorize any other movement of children between the two Little Rascals facilities.
6. Jack Haldeman, a licensed investigator, was employed by the Department and charged with the duty of conducting an on-site investigation of the facility on December 14, 2009 at approximately 9:45 am. In the course of the visit, he observed only two children in attendance, rather than the five referenced in the provider packet that had been provided to him, and he was told by one of the staff members that she was caring for her own children at the facility.
7. Jack Haldeman asked for historical attendance records for the period September 14, 2009 to December 14, 2009. He was informed by Jeff Sims that the records were not available. Jeff Sims then told Haldeman that he had called Ida Williams and that Ms. Williams had indicated that the records were "locked up" but that she would retrieve the records and provide them to Haldeman later in the day.
8. At approximately 2:10pm on December 14, 2009, Ida Williams turned over attendance records to Jack Haldeman covering the period September 6, 2009 to November 28, 2009. She told Haldeman that the records for the period subsequent to November 28, 2009 were

yet to be completed, and she told him that she does not record attendance information on a daily basis.

9. Child care payments in the amount of \$1841.79 were made to the provider for payment request submissions covering the period December 5, 2009 to December 12, 2009.
10. In addition, \$19.28 was overpaid for one child for the period October 11, 2009 to October 17, 2009.

DISCUSSION

The petitioner is a child care provider. Some or all of the parents of the children in the petitioner's care are eligible for the Wisconsin Shares child care subsidy due to low income. On February 12, 2010, the Department issued a notice to the petitioner declaring that the Department was refusing to make child care payments to the petitioner from February 6, 2010, forward.

The Department initiated its action by relying upon the following statutory provision in effect at the time of the action:

(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)

Wis. Stat. § 49.155(7)(a)4

No code language has been promulgated to provide direction in the implementation of Wis. Stat. § 49.155(7)(a)4.

Wisconsin. Admin. Code § DCF 250.04(6) provides that the provider shall maintain a current written record on each child enrolled, and shall make the record available to the licensing

representative upon request, and provides that the licensee "shall maintain a current, accurate written record of the daily attendance on a form prescribed by the department that includes the actual time of arrival and departure for each child for the length of time the child is enrolled in the program."

The Department has continually informed providers of the need to keep attendance reports current and accurate. See Exhibit R-16, a series of Department "Sharing the News" newsletter sent to Shares program providers. The newsletters reiterated the need to keep accurate, up-to-date attendance records and that the providers were required to make them available to licensing agents upon request.

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.

Wisconsin. Stat. § 49.155(6m(a)). This petitioner violated the above requirement by being unable to produce a written record of daily hours of attendance for the period of November 29, 2009 to December 5, 2009, and by indicating that attendance information is not recorded on a daily basis. Thus there was reasonable suspicion that the petitioner violated a provision of Wis. Stat. § 49.155.

Wisconsin. Admin. Code § DCF 201.04(5) requires a child care administrative agency to take all reasonable steps necessary to recover from a provider any overpayments made for child care services for which the provider is responsible.

In this case, the Department was able to establish that an overpayment had been made. Payments were made for dates for which the provider had been unable to provide attendance records, or, in one particular case, for a date that was not accurate.

The Department correctly determined that the overpayment to the petitioner was in the amount of \$1861.07.

There is no basis for reversing or changing the Department's actions regarding refusal to pay Wisconsin Shares payments based on reasonable suspicion of program rule violations or regarding the overpayment.

CONCLUSIONS OF LAW

1. The Department had a reasonable suspicion that petitioner was violating child care rules and thus correctly suspended Wisconsin Shares payments.

2. The Department correctly determined that the provider was overpaid in the amount of \$1861.07.

NOW, THEREFORE, it is ORDERED

That the petition is dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. THE PROPOSED DECISION 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.

Patrick T. Currie
Administrative Law Judge
Division of Hearings and Appeals