



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Every Child's Place, Inc.

DECISION

ML-10-0282

PRELIMINARY RECITALS

A petition was filed on June 23, 2010, under Wis. Stat., §48.72 to review a decision by the Division of Early Care and Education (Division) to order a child care provider to stop violating rules and to impose a forfeiture. On July 27, 2010, the Division moved to dismiss the appeal as untimely.

The issue for determination is whether petitioner's appeal was untimely.

PARTIES IN INTEREST:

Petitioner:

Virginia M. Brydges
Every Child's Place, Inc.
3220 30th Avenue
Kenosha, WI 53144

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

By: Atty. Nicole L. Bjork

EXAMINER:

Brian C. Schneider, Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner operates a group day care center in Kenosha.
2. On June 9, 2010, the Division issued to petitioner a notice of order to stop violating statute and/or rules along with a direct forfeiture of \$1,000. The notice was delivered to the center on June 10, 2010.
3. Petitioner filed this appeal on June 23, 2010, in a letter dated June 18 and postmarked June 22, 2010.

DISCUSSION

Wis. Stat., §48.72 provides, in the part relevant here, as follows:

Except as provided in s. 48.715(6) and (7), any person aggrieved by the department's refusal or failure to issue, renew, or continue a license or by any action taken by the department under s. 48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department's refusal or failure to issue, renew, or continue a license or the department's action taken under s. 48.715.

Wis. Stat., §48.72 clearly specifies that a day care licensee, including a group child care center licensed under Wis. Adm. Code, Chapter DCF 251, must notify the department of its request for a hearing to contest the propriety of, as here, forfeitures and/or sanctions taken under Wis. Stat., §48.715, by sending a written request for a hearing to the department within ten days of the date of the department's action.

The department's supporting affidavit establishes that the notice at issue was mailed by certified mail and regular mail on June 9, 2010. It was received by the licensee, by signature of an agent, by certified mail on June 10, 2010. Under Wis. Adm. Code, §HA 1.03(3), an appeal is considered received by the Division of Hearings & Appeals on the postmark date on the envelope. The postmark on petitioner's appeal letter was June 22, 2010. Ten days after June 10 was June 20, 2010, which was a Sunday, and thus petitioner could have filed the appeal anytime up until the end of the business day on June 21, 2010.

The jurisdictional statute specifies that the appeal must be sent within ten days. There is no exception written into the law. I find that the appeal was filed too late on the 12th day after the date of service of the notice. Accordingly, the petition is untimely as a matter of law. The Division's motion to dismiss the appeal is granted.

CONCLUSIONS OF LAW

Petitioner's appeal of an order and forfeiture was untimely.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

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 new hearing. You may also ask for a new hearing if you have found new evidence that 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 twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. 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 thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning the revocation of a group child care license must be served on the Wisconsin Department of Children & Families, as respondent, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI 53708-8916. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of August, 2010.

Brian C. Schneider, Administrative Law Judge
Division of Hearings and Appeals