

for licensing related to personal qualifications, health, and shall be no younger than 18 years of age.

(d) The foster mother shall not be employed away from the home.

**History:** Cr. Register, April, 1957, No. 16, eff. 5-1-57; r. and recr. Register, June, 1970, No. 174, eff. 1-1-71.

**PW-CY 40.65 Fair hearings.** (1) **LEGAL BASIS.** This rule is adopted pursuant to section 48.64(4) (a), Wis. Stats.

(2) **DEFINITIONS.** (a) A claimant means a person licensed to operate a foster home under section 48.62, Wis. Stats., affected by a decision or order issued by a division of the department of health and social services, a county welfare department or a child welfare agency.

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employe of the state agency, in which a dissatisfied claimant or his representatives may present his case with the help of witnesses to show why action or inaction in his case should be corrected by the state agency; it is a continuation of the administrative process in which the claimant invokes the responsibility of the state agency through a quasi-judicial hearing in the particular case.

**NOTE:** Impartial employe of the state agency is currently defined as a hearing officer of the legal section of DFS.

(c) A request for a hearing is defined as any clear expression on the part of the claimant to the effect that he wishes to go beyond the usual procedure for adjusting complaints with a division of the department of health and social services, a county welfare department or a child welfare agency, and that he wants an opportunity to present his case to the department of health and social services. The specific wording of such a request is immaterial.

(d) The date of the request for hearing is defined as the date on which the request is received.

(3) **PURPOSES.** The major purposes of hearings are:

(a) To provide an opportunity for a dissatisfied claimant to appeal a decision or order issued by a division of the department of health and social services, county welfare agency, or a child welfare agency affecting the claimant or the children involved.

(b) To enable the county and claimants, jointly, to ascertain the factual basis on which, through proper application of the law and agency policy, a just decision may be reached.

(c) To contribute to uniformity in the application of the law and policy by assuring that every claimant is fully informed of his rights, that hearings on any grievance are readily available, and that instances of inequitable treatment are speedily remedied by prompt execution of hearing decisions.

(d) To safeguard claimants from mistaken, negligent, unreasonable or arbitrary action. The hearing process is not a substitute for proper and efficient administration and is not designed to produce any result that could not have been produced through regular administrative processes.

(e) To reveal aspects of a division of the department of health and social services, a county welfare department or a child welfare agency policy that constitute a misconstruction of law, state rules or policy.

(f) To provide a method whereby evidence may be obtained for referral to proper state policy-making authority, which evidence may show the need for modification of a state policy or policies.

(4) REQUIREMENTS. (a) Every claimant at the time of his application, and when other administrative decisions are made shall be informed in writing of his right to a fair hearing if his application is not acted upon with reasonable promptness, or if he is not satisfied with the action taken, and the method by which he may obtain a hearing.

(b) Every claimant may obtain a hearing before the department of health and social services in relation to a decision or order if he is dissatisfied with the action taken.

(c) The request for a hearing must be timely. No review will be provided in any case where the decision or inaction to be reviewed involves a question which arose more than 60 days prior to the request for a hearing.

(5) REQUEST FOR HEARING. (a) A complaint may be initiated orally in person, by letter or by form and if not adjusted by a division of the department of health and social services, a county welfare department or a child welfare agency to the satisfaction of the claimant a request for hearing will be completed and a hearing will be scheduled. Requests for hearing shall usually be on the simple form supplied by the state agency, but no written request shall be rejected for lack of formality.

(b) An oral request for a hearing made in person will be accepted, but shall be reduced to writing and signed by the claimant before the hearing will be scheduled. No request shall be dismissed without hearing unless the claimant shall remove from the jurisdiction, die, withdraw his request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor his representative appears at the time and place set for hearing, and if, within a reasonable time after the mailing of an inquiry as to whether he wishes any further action taken on his request for a hearing, no reply is received by the state agency.

(6) FAIR HEARING. (a) Hearings shall be held at a time convenient to the claimant and agency staff, easily accessible to the claimant and, whenever possible, on the premises of a division of the department of health and social services, a county welfare department or a child welfare agency, subject to the judgment of the hearing officer. Adequate preliminary notice shall be given to the claimant and his representative, if any, including information about the procedure at the hearing.

(b) The hearing shall be conducted by a hearing officer, duly appointed and qualified under the state civil service laws, who has not taken any part in the particular action under consideration.

(c) The claimant shall have the opportunity to examine all documents and records used at the hearing at a reasonable time

before as well as during the hearing; have the opportunity to present his case, or be represented; have the opportunity to bring witnesses, confront and examine witnesses adversely, to establish all pertinent facts and circumstances, to advance any arguments without undue interference, and to question or refute any testimony or evidence.

(d) Unless waived by both parties a continuance for a reasonable time shall be granted when an issue is raised for the first time in a hearing.

(e) The claimant may question interpretation of the law, and the reasonableness and equity of policies practiced under the law, if he is aggrieved by their application to his situation.

(f) The hearing is an informal administrative procedure subject to the requirements of due process.

(7) DECISIONS. (a) The transcript of testimony and the exhibits, papers and request filed in the proceeding constitute the exclusive record for decision and are available to the claimant at any reasonable time after the decision upon request, and at a place accessible to him.

(b) The decision on the hearing shall be in writing by the secretary of the department or his designee.

(c) The decision shall set forth the issue or issues, citation of law or precedents, the reasoning that led to the decision, the principal and relevant facts elicited at the hearing, and the action taken. These factors shall be grouped under appropriate headings such as preliminary recitals, finding of fact, conclusions of law and order. A certified copy of the decision shall be mailed to the claimant (and his attorney if any) and the division of the department of health and social services, a county welfare department or a child welfare agency charged with the administration of the services.

(8) ALLOCATION OF RESPONSIBILITY. The functions relating to fair hearings are allocated to the division of family services. All final decisions, except cases wherein the request for review has been abandoned, shall be based upon hearings conducted by the hearing officer duly appointed pursuant to state civil service laws and responsible to the division, provided that if emergency needs so require the division administrator or any other employe duly designated by him may serve as a hearing officer. Such decisions shall be binding upon the state, county agencies, and child welfare agencies involved.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. Register, July, 1975, No. 235, eff. 8-1-75.

**PW-CY 40.70 Definitions.** (1) DAY CAMPING means an experience in group living in a natural environment. It is a creative, educational experience in cooperative group living in the out-of-doors; carried on during the day time under the supervision of trained leaders. It utilizes resources of the natural surroundings to contribute significantly to mental, physical, social and spiritual growth.

(2) DEPARTMENT means the Wisconsin state department of public welfare.

(3) **DIVISION** means the Wisconsin state division for children and youth.

**History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61.

**PW-CY 40.71 License.** (1) **LICENSE REQUIREMENTS.** Day camps providing group care for 4 or more children under 7 years of age and operating for compensation and/or consideration for services must be licensed.

(2) **LICENSE PROCEDURES.** (a) A non-transferable license shall be secured annually from the department, upon appropriate application and compliance with the rules and standards.

(b) Each license shall bear the name of the camp, name of the person licensed, and a description of the premises.

(c) The number of children specified on the license is the maximum number to be received or to be cared for at one time.

(d) There is no fee charged for the license.

(3) **LICENSING EXEMPTIONS.** No license is required for a person or persons who provide:

(a) Camping experience for children at the child's own home and/or in homes of relatives or guardians.

(b) Camping experience conducted by public and parochial schools.

(c) Camping given to children on church premises while their parents are attending religious services.

(4) **APPLICATION FOR LICENSE.** An application for a license which shall be made in writing to the department shall include:

(a) A statement from the state laboratory of hygiene or certified laboratory indicating that the water source has been tested and found to be safe.

(b) A statement of the purpose of the day camp.

(c) A description of the program and activities designed to carry out the purposes.

(d) A general description of the camp area and its general geographical location.

(e) A completed application form.

(5) **RENEWAL OF LICENSE.** Application for a renewal of license shall be made:

(a) Each year in writing to the department on specified forms.

(b) Whenever there is a change in the conditions described on the last license issued.

(6) **EVALUATION.** (a) A representative of the department shall visit and study each day camp before the initial licensing and each subsequent renewal. The representative shall submit to the department a written evaluation indicating whether the required standards

have been met. He may visit at any time to assure continued compliance.

(b) Each camp shall have the continued supervision and consultation of the department and shall submit required reports.

(c) The department at its discretion shall have the authority to make exceptions to any rule or standard, when it is assured that the granting of such an exception will not be detrimental to the children attending the camp.

(7) PROVISIONAL LICENSES. A provisional license may be issued and renewed in periods up to 2 years to any camp whose services are needed, but is temporarily unable to conform to all established minimum requirements.

(8) REVOCATION OF LICENSE. (a) The right to operate is dependent upon continued compliance with the required rules and standards.

(b) The license may be revoked by the department in accordance with section 48.71 (1) and (2), Wis. Stats., and with section PW-CY 40.02, Wis. Adm. Code, dealing with license procedures.

(9) APPEAL PROCEDURE. (a) Any person aggrieved by the department's refusal or failure to issue or renew a license, or by its revocation of a license, has the right to an administrative hearing provided for contested cases in chapter 227, Wis. Stats.

(b) Judicial review of the department's decision may be had as provided in chapter 227, Wis. Stats.