

Oneida Appeals Commission

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Trial Court

Fern Birdsbill,
Petitioner

Docket No. 06-TC-112

v.

Date: December 28, 2006

Oneida Child Care,
Dorothy Skenandore,
Respondent

Decision

This petition has come before the Oneida Tribal Judicial System. Judicial Officers: Mary Adams, Gerald Cornelius and Leland Wigg-Ninham, presiding.

I Background

On Friday, December 15, 2006 Petitioner, Fern Birdsbill, filed a Motion for Stay so that she and her child could continue to receive services at the Oneida Child Care until this case has been properly adjudicated. Petitioner alleges Respondent, Oneida Child Care, Director Dorothy Skenandore, based her termination of child care services on two factors: outstanding child care fees and violation of a "three-strikes" policy. Furthermore, Petitioner claims the three-strikes policy is not included in the Parent Handbook.

On Friday, December 15, 2006 a deliberation was held. The court denied Petitioner's Motion for Stay because immediate and irreparable harm was not apparent. In order to preserve and respect Petitioner's due process rights, a hearing was held on Friday, December 22, 2006 at 9:00 am. After reviewing the filings and arguments of the parties, we dismiss the matter based on Petitioner's failure to exhaust administrative remedies.

II Issues

The Court requested the parties to address the following issues at the hearing:

1. Was Petitioner given adequate notice that her child care privileges would be terminated based on early drop off or late pick up?
2. Is Petitioner required to complete the Respondent's grievance process before coming to court?
3. Has Petitioner invoked the Respondent's grievance procedure?

III Analysis

Was Petitioner given adequate notice that her child care privileges would be terminated based on early drop off or late pick?

Petitioner points out according to the Parent Handbook, page 7, Section 16 - Early/Late Pick up, a parent/guardian can be denied child care services if they are late three (3) times in one year. Petitioner asserts the policy is extremely unreasonable but does not challenge its validity otherwise. Petitioner argues that her tardy pick ups were only one to three minutes. Petitioner asserts the differences in clocks in the child care building contributed to her alleged tardiness.

Respondent points out Petitioner's child care services were not terminated based on early/late pick up, but due to her failure to meet payment arrangements regarding weekly tuition payments as agreed between the parties on September 22, 2006. Respondent argues at the time Petitioner made the agreement to bring her balance to zero she owed \$1,562.89 and furthermore, Petitioner was to pay her weekly tuition in the amount of \$92.40 in advance. Respondent claims Petitioner received a memo from Ms. King (9/22/06) that included a consequence in that agreement that read "Failure to adhere to this procedure will result in initiation of termination of services" (See Respondent's Exhibit 3).

Petitioner claims the arrangement she made gave her until March 22, 2007 to bring her balance to zero and believed she had six (6) months to get her account current. We find Respondent has the stronger argument. Petitioner does not deny receiving the September 22, 2006 memo. The

memo clearly puts Petitioner on notice of the consequences of her failure to make the required payments at the required times.

Is Petitioner required to complete the Respondent's grievance process before coming to court?

Petitioner argues the Grievance Process memo she received says there is no further appeal to this process, the Director's decision is final. Petitioner asserts this statement is false and misleading. Petitioner asserts according to the Administrative Procedures Act any decision made by a director or Area Manager can be appealed.

Respondent contends Petitioner is required to follow the Oneida Child Care Grievance Process. Respondent points out Petitioner is not grieving an employee position but rather she is grieving as a consumer. Respondent claims if Oneida Child Care can not provide her with the services she needs then she is free to look elsewhere for those services.

In at least one other Oneida Tribal Judiciary case we have established the requirement of a Petitioner's exhaustion of administrative remedies before seeking relief in this forum. In Metoxen v. Oneida Bingo & Casino, 94-EP-0009 (9/14/1994), the court turned away an employment complaint where the appellant had not yet taken advantage of other remedies within the tribal administrative system.

We apply the same rule here. Respondent has an established grievance procedure which Petitioner has not invoked. We should accord respect to administrative procedures where they exist and where doing so does not conflict with Oneida law. Petitioner should have sought relief first by using Respondent's established grievance procedure.

Has Petitioner invoked the grievance procedure?

Petitioner admits she received her December 15, 2006 notice from Dorothy Skenandore after she filed her petition with the trial court. Petitioner points out that the Grievance Process or the

memo from Ms. Skenandore did not address whether the child/children may remain in attendance during the grievance process.

Respondent claims Petitioner did not invoke the grievance procedure to the Child Care Director in a response memo regarding separation of services she received from Ms. King, then appealed to Ms. Skenandore, Director of the Child Care Department. Respondent asserts the Child Care Policy on Internal Investigation of Complaints was recommended for adoption by the Oneida Law Office in a Statement of Effect. Respondent contends child care services are provided as a service to consumers. Therefore, Respondent supports that the grievance procedures allow consumers to adequately resolve complaints through their process and the Director's decision is final. Finally, Respondent contends Petitioner began the grievance procedure but failed to wait for the Director's answer before filing at the court, thus she did not follow the grievance procedure.

Findings and Facts

This case is dismissed due to Petitioner's failure to use the Respondent's established grievance process prior to filing in court. This case is about the Oneida Child Care denying Ms. Birdsbill's right to child care services. Ms. Birdsbill claims she has a right to file her termination of child care services with the trial court in accordance with the APA, Contested Cases. Ms. Birdsbill concludes the Child Care Department's grievance procedures are false and misleading because the final decision to provide or deny child care services stops with the Director of the Child Care Department. Both parties provided a copy of the grievance process as defined in the Grievance Process memo with a revision date of November 1, 2006. This memo explains the grievance process for those who wish to express their dissatisfaction in the form of a grievance. It lists the child Care Supervisor as the person to deliver the grievance to, it lists the Child Care Director as the person to deliver the appeal to and lastly, number seven (7) says, "There is no further appeal to this process, the Director's decision is final."

In addition to Petitioner's failure to exhaust administrative remedies, it is not clear to us whether

this case is a "contested case" as that term is used in Sec. 1.3-1(c) of the Administrative Procedures Act, but not for the reasons asserted by Respondent. Respondent asserts contested cases are limited to employment matters. This is not true. The definition of a contested case is:

A proceeding before an "Agency" in which an opportunity for a hearing before said "Agency" is required by law prior or subsequent to the determination of the "Agency" of the legal rights, duties, or privileges or specific parties unless otherwise provided for by tribal law. This shall include the revocation, suspension, or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting.

There is no limitation on the subject matter of contested cases. However, it is not clear whether as part of the Child Care Center's grievance procedure a hearing is required by law. Even if Petitioner did exhaust her remedies, we do not see enough evidence on this record to conclude the grievance procedure represents a "contested case" within the meaning of that term as defined in the APA Sec. 1.3-1(c). In order for the trial court to assert jurisdiction in these types of matters, the APA requires appeal from a "final decision" in a "contested case." Sec. 1.11-1(a). APA.

Ms. Birdsbill received notice of her child care termination in the following memos. First on September 22, 2006, Petitioner received a memo from Ms. King, ARCC Supervisor, allowing Petitioner six (6) months to bring her account to zero. In addition, the memo explains her weekly tuition payments of \$92.40 are due in advance, on the Friday before care, and must be paid in the full amount of one week or more. The memo says, "Failure to adhere to this procedure will result in initiation of termination of services." Then on November 30, 2006, Petitioner received a second notice from Ms. King announcing Petitioner's termination date as Friday, December 15, 2006 due to her tuition payment agreement not being upheld. The memo says, "For the month of November we have received one payment on November 20, 2006."

While Ms. Birdsbill may feel she has been unfairly treated by the Respondent, the Child Care Department has a policy in effect that governs their right to terminate services. The Respondent showed several attempts of assisting Ms. Birdsbill by allowing her to have six (6) months to

bring her payments current. The responsibility then shifted to Ms. Birdsbill to pay for her child care services one week or more in advance. Ms. Birdsbill agreed to these arrangements in order to keep her child in Oneida Child Care. Ms. Birdsbill failed to uphold the agreement. It is not the court's place to interfere with such an agreement.

IV Decision

This case is dismissed.

It is so ordered.