



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/170351

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration ["MECA"] in regard to Child Care ["CC"], a Hearing was held via telephone from Madison, Wisconsin on December 22, 2015.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

BY: [REDACTED], Child Care Subsidy Specialist, Senior  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a written letter notice in the U.S. Mail entitled *Child Care (CC) Client Overpayment Notice* dated February 12, 2015; he received that letter notice; the letter notice informed petitioner of the following alleged CC overpayment: Claim Number [REDACTED] in the total amount of \$3,972.31 covering the time period January 5, 2014 to June 30, 2014; the letter informed petitioner of his appeal rights, including the 45-day time limit for requesting a Hearing.
3. Petitioner requested a Hearing by a *Request For Fair Hearing* form dated November 19, 2015 and received by DHA on November 25, 2015 via U.S. Mail in an envelope postmarked November 23, 2015.

**DISCUSSION**

There is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning a W-2 CC overpayment is untimely if it is not filed within 45 days. Wis. Admin. Code § DCF 101.23(2)(d) (October 2015) & Wis. Admin. Code § HA 3.05(3) (February 2013); See also, Wis. Stat. §§ 49.155 & 49.195(3) (2013-14); DHA Case No. CCB-40/63026 (Wis. Div. Hearings & Appeals Proposed Decision August 10, 2004; Final Decision September 22, 2004) (DWD); and, DHA Case No. CCB-30/63517 (Wis. Div. Hearings & Appeals Proposed Decision September 9, 2004; Final Decision December 30, 2004) (DWD). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the alleged W-2 CC overpayment detailed in *Findings of Fact #2*, above. The notice for that overpayment was issued February 12, 2015. The last date for a request for a Hearing to be filed was 45 days from February 12, 2015 -- which was March 30, 2015 (March 29, 2015 was a Sunday). Petitioner's request for a Hearing was not filed until November 23, 2015; well beyond the allowed 45-days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that he did not receive the letter notice. This is not credible. Petitioner does not deny that he lived with his wife at the address to which the letter notice was sent at the time the letter notice was sent (February 12, 2015). On March 4, 2015 petitioner's wife filed an appeal with DHA concerning this same overpayment. A Hearing was held on March 25, 2015 and a *Decision* dated May 22, 2015 was issued. See, DHA Case No. CCO/164414 (Wis. Div. Hearings & Appeals May 22, 2015) (DCF).

**CONCLUSIONS OF LAW**

For the reasons discussed above, DHA does not have jurisdiction in this matter because petitioner's request for a Hearing was not filed in a timely manner.

**NOW, THEREFORE, it is**

**ORDERED**

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

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 3rd day of March, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 3, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud