



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOS/171741

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2016, under Wis. Stat. §48.64(4), and Wis. Admin. Code §DCF 56.10(1), to review a decision by the [REDACTED] in regard to Foster Care, a hearing was scheduled for May 24, 2016 at a prehearing held on March 2, 2016. Also at the prehearing, the agency's attorney requested a motion schedule be given as she was filing a motion to dismiss for untimeliness. A motion schedule was agreed upon and the parties submitting their motions and reply briefs. Accordingly, this decision addresses the motion for untimeliness.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: [REDACTED], FOR:
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On January 13, 2016, the foster care licensing agency sent a written notice of negative action to the petitioner.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 29, 2016.
4. The negative action in this case was the revocation of a foster home license.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Foster Care must be received no more than 15 days after **the date of the notice** of the agency decision's to revoke the license. See Wis. Adm. Code §DCF 56.10(2)(emphasis added). Additionally, the date of the request for a hearing shall be the date on which the request is received by the Division of Hearings and Appeals. *Id.* The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 29, 2016. The petitioner's appeal was filed 16 days after the date of the notice. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Accordingly, the hearing set for May 24, 2016 is cancelled.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed and the hearing set for May 24, 2016 is cancelled.

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.

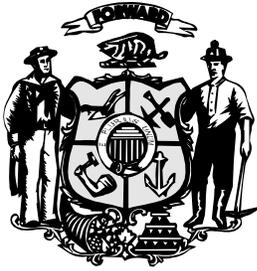
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 7th day of April, 2016

\sKelly Cochrane
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 April 7, 2016.

[REDACTED]

DCF - Foster Care

[REDACTED]

[REDACTED]