



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB- 173463

PRELIMINARY RECITALS

On April 5, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03(4), to challenge a decision by the Milwaukee Early Care Administration - MECA regarding Child Care. The hearing was held on May 3, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is untimely and if so, whether her child care benefits may be backdated to September 9, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], Child Care Subsidy Specialist
Milwaukee Early Care Administration (MECA)
1220 W. Vliet St., 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 9, 2015, the Ross IES W-2 Program sent the Petitioner a renewal notice and application summary, because the Petitioner requested to complete her renewal by mail. (Exhibit 2)

3. On or about September 11, 2015, the Petitioner provided the signature page of the application summary to complete her renewal. (Exhibit 5)
4. On September 14, 2015, Milwaukee Enrollment Services (MILES) sent the Petitioner a notice advising her that she was eligible for child care beginning September 1, 2015. The notice also advised the Petitioner that she needed to obtain an authorization to approve payment to her child care provider. (Exhibit 3)
5. On October 2, 2015, MECA made a case comment indicating the Petitioner was assigned 20 hours, "if Caring for Family at home", but child care hours were not approved. (Exhibit 3)
6. On October 6, 2015, the agency processed a request for authorization of child care hours. (Exhibit 3)
7. On October 19, 2015, MILES issued a notice indicating that it was authorizing child care beginning October 4, 2015. (Exhibit 4)
8. On December 22, 2015, the Petitioner contacted the agency and asked to back date her child care benefits to the period of August 30, 2015 to October 3, 2015, but was told that an authorization could not be granted, because she was not engaged in an approved activity. (Exhibit 3)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 5, 2016. (Exhibit 1)

DISCUSSION

Authorization means the number of hours for which a child care provider will be paid and the rate at which the childcare provider will be paid. *See* Wis. Stats. §59.155(6g)(a)1. and Wis. Admin. Code §DCF201.04(2g). The county agency does have the discretion to limit or refuse authorizations for a particular provider, if the provider will be in violation of the "40% rule, if the provider will exceed its certified capacity, employment has not been verified, the provider refuses to provide documentation or attendance reports are over three months old. *See* Wis. Stats. §59.155(6g)(a)1., Wis. Admin. Code §DCF201.04(2g) and *Wisconsin Share Child Care Assistance Manual* §2.1.2.1

Thus, authorization is NOT the same as eligibility.

At the hearing the Petitioner stated that she filed an appeal, because she wants an authorization to cover the child care expenses she incurred between September 9, 2015 and October 3, 2015.

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 of Children and Families, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3), Wisconsin Shares Child Care Assistance Manual, Chapter 2, § 2.1.5.3. A negative action can include the termination of benefits, the recovery of an overpayment, or the denial of an authorization.

In the case at hand, MILES issued a notice on October 19, 2015, indicating it was authorizing child care hours for October 4, 2015, going forward. As such, the Petitioner needed to file an appeal within 45 days October 19, 2015, if she wanted to contest the denial of child care for the period of September 9, 2015 through October 3, 2015.

The Petitioner did not file her appeal until April 5, 2016, well past the 45-day deadline. As such, her appeal is untimely and there is no jurisdiction to review the merits of her appeal regarding the October 19th notice.

However, Wisconsin Shares Child Care Assistance Manual, Chapter 2, § 2.2.3.2, states that, "Late request for child care authorizations should be honored if all work criteria are met and eligible care has been provided."

It is undisputed that during the time in question, the Petitioner was not engaged in any assigned W-2 activities. It is also undisputed that during the time in question, the Petitioner had a child in day care, while she cared, at home, for another child, who is disabled.

A parent/caregiver may receive for child care services if he/she needs child care to work in an approved activity. *Child Care Manual*, §§ 1.5.0, et al., & 1.4.8. One type of approved activity is "Work in a Wisconsin Works employment position, including participating in job search, orientation and training activities under unsubsidized employment, and in education or training activities for trial jobs, community service jobs, or transitional placements..." *Child Care Manual*, §1.5.4

Caring for a disabled child at home, while another child attends daycare is not an approved activity under *Wisconsin Share Child Care Assistance Manual* §1.4.8, et al. As such, MILES/MECA cannot authorize payment for child care that the Petitioner used September 9, 2015 and October 3, 2015.

Petitioner argues that she should not be responsible for paying for the child care that she used between September 9, 2015 and October 3, 2015, because she put her child in daycare based upon misinformation from her W-2 worker. However, the Petitioner also indicated that she put her child in daycare, because she was afraid there would no longer be an opening with her provider if she waited. Further, the Petitioner's argument is an equitable one, meaning it is based upon what the Petitioner thinks is fair, not upon what the law states. Administrative Law Judges do not have equitable powers, but must instead apply the law as it is written.

CONCLUSIONS OF LAW

Petitioner's appeal of the October 19, 2015 authorization notice is untimely.

Petitioner was not in an approved activity between September 9, 2015 and October 3, 2015; as such she may not receive an authorization for child care for that period of time.

THEREFORE, it is

ORDERED

That the petition is 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, **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 14th day of July, 2016.

\s _____
Mayumi Ishii
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 July 14, 2016.

Milwaukee Early Care Administration - MECA
Child Care Benefits