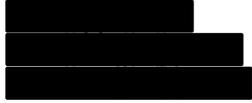




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/173642

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care (CC), a hearing was held on May 12, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner’s appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Kenosha County.
2. On January 13, 2016 the agency sent the petitioner a notice of child care overpayment stating that she was overpaid \$516.68 in child care benefits from December 1, 2014 through July 31, 2015. This notice went on to say that the petitioner had until February 29, 2016 to request a fair hearing. The notice was sent to the petitioner’s correct address. The petitioner received this notice.

3. The Division of Hearing and Appeals received the petitioner's Request for Fair Hearing on April 15, 2016.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g).

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the parent was not in an approved activity. Child Day Care Manual, Chapter 1, §1.4.8. Parents must also meet income requirements to receive child care assistance. Child Day Care Manual, Chapter 1, §1.5.1.1.

An appeal of a negative decision concerning child care must be filed within 45 days of the negative decision. Wis. Adm. Code, §HA 3.05(3). The petitioner was informed about the time limit in the January 13, 2016 notice letter. She stated that she had a lot going on at that time, and "totally forgot to return it." I give the petitioner credit for being honest. That said there is no good cause exception, and I cannot ignore this time limit.

I must conclude that petitioner's appeal of the overpayment was untimely. She did not appeal within 45 days of January 13, 2016. Therefore the agency may seek recovery of the entire amount cited in the overpayment notice.

CONCLUSIONS OF LAW

The petitioner's appeal is untimely.

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, 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 20th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 20, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud