



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCB/142663

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Racine County Department of Human Services in regard to Child Care benefits (CCB), a hearing was held on October 09, 2012, at Racine, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Kathy Christman

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On May 18, 2012, the county agency sent a written notice of negative action to the petitioner stating that her CCB would end on May 31, 2012 for failing to complete her review. Exhibit 1.

3. On May 18, 2012 petitioner conducted a CCB review. At that time she reported that her employment with Racine Unified School District would be ending on June 12, 2012.
4. On May 21, 2012 the agency pended her CCB review and issued a request for verification to petitioner requesting she provide proof of her employment with Racine Unified by May 30, 2012 to the agency. Exhibit 2.
5. On May 30, 2012 Racine Unified submitted an Employer Verification of Earnings form to the agency along with a May 2012 checkstub. None of that information showed that petitioner's employment there was ending. See Exhibit 3.
6. On June 15, 2012 the agency again pended her review and issued a request for verification to petitioner requesting she provide a proof of her employment with Racine Unified by June 25, 2012 to the agency. Exhibit 4. On this request the agency added the following language, "you indicated at review that you would not be working after 06/12/12. per wage form completed you are still employed at racine unified. if you will no longer be working there i will need wage form to state that. i am sending another one to get completed. if something changed please let wkrp know. wage form completed states hours 7.30- 3.30 8.5 hours per week." Exhibit 4 [sic].
7. The agency did not receive any information to show that her job with Racine Unified ended. The agency closed her case effective May 31, 2012.
8. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on July 25, 2012.

### 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 CCB must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wis. Stat. §49.152(1), Wis. Admin. Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of CCB. Because the petitioner's appeal was filed 68 days after the county agency's negative action concerning CCB, it is untimely.

It was not evident at hearing that the issue petitioner was appealing – June's CCB – was actually untimely and therefore testimony was taken. I add therefore, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of November, 2012

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Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals

c: Child Care Benefits, Marcie.Stebbeds@wisconsin.gov - Marcie.Stebbeds@wisconsin.gov  
WKRPFairHearings@kenoshacounty.org, WKRPFairHearings@kenoshacounty.org - Racine County



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The preceding decision was sent to the following parties on November 6, 2012.

Racine County Department of Human Services  
Child Care Benefits