



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CCB/144683

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 26, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Fond du Lac County Department of Social Services in regard to Child Care (CC), a hearing was held on December 6, 2012, at Fond du Lac, Wisconsin.

The issues for determination are (1) whether the petitioner's appeal was timely filed, and (2) whether the county agency correctly denied CC benefits to the petitioner for March and April, 2012.

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: Deb Pohlman, ES Spec.

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. The petitioner had an ongoing CC case prior to March 1, 2012. Her case was due for a periodic (SMRF) review in February 2012. The agency received a SMRF form from the petitioner in February, but the required employment verification was not enclosed. On February 10, 2012, the

agency issued a written employment verification request to the petitioner, with a submission deadline of February 20, 2012. On February 17, 2012, the agency issued written notice to the petitioner advising that her case would close effective March 1, 2012, if the verification was not timely submitted. Verification was not returned until April 23, 2012.

3. On February 20, 2012, the county agency issued written notice confirming that the petitioner's CC authorization to the daycare provider was ending on February 25, 2012. Both the February 17 and February 20, 2012 notices advised the petitioner of the 45-day appeal deadline. The petitioner received the February notices, which were sent to her correct address.
4. The petitioner filed a new CC application in May, and her CC benefits resumed effective May 1, 2012, to the present.
5. The petitioner filed an appeal on September 26, 2012.

### **DISCUSSION**

Wis. Stat. §49.155 authorizes the Department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also Wis. Admin. Code §DCF 101.26. The Department has a *Child Day Care Manual (Manual)* that provides the specific policies for the program. See the *Manual* online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

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 a county agency concerning W-2 Childcare actions must be filed within **45** days of the date of the action. Wis. Admin. Code §HA 3.05(3); *Income Maintenance Manual*, II-G-3.3.1; *Manual*, §2.1.5.3. The petitioner's appeal was filed more than 45 days after the date of the March 1, 2012 discontinuance action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

At hearing, the petitioner expressed unhappiness with a recent CC overpayment notice that she received. The overpayment was not identified as an issue on the September 26 appeal form, and the agency was not ready to proceed on the issue, so it is not addressed here. The petitioner was encouraged to immediately file a hearing request on the CC overpayment issue, if she desires to contest it.

### **CONCLUSIONS OF LAW**

1. The petitioner's hearing request is untimely with respect to the discontinuance of her CC benefits for March and April 2012.

**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 served and 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 Madison,  
Wisconsin, this 7th day of December, 2012

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\sNancy J. Gagnon  
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 December 7, 2012.

Fond Du Lac County Department of Social Services  
Child Care Benefits