



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/145110

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 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, a hearing was held on December 04, 2012, at Racine, Wisconsin. Following the hearing in this matter, the case was transferred to Administrative Law Judge Peter McCombs. Petitioner consented to a 45 day extension of the decision due date. The file and recording of the hearing were reviewed by ALJ McCombs.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction over the denial of petitioner's Child Care benefits.

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, Wisconsin 53703

By: Kathy Christman

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

ADMINISTRATIVE LAW JUDGE:

Michael A. Greene (telephonically)

Subsequently assigned to: Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County who is the divorced father of a minor son and daughter.

2. On July 16, 2012, respondent sent petitioner an Eligibility Review Letter – Child Care, advising that a review for Child Care was due August 3, 2012. On August 17, 2012, respondent sent notice indicating that petitioner’s Child Care would close effective August 31, 2012, due to his failure to complete the required review. Exhibit 1.
3. Petitioner completed the review on August 24, 2012.
4. A Notice of Action and Proof Needed was sent by respondent to petitioner on August 27, 2012, requesting a signed signature page and verification of income. These items were due on September 5, 2012, per the notice. Exhibit 3.
5. When the verification information was not received, respondent sent petitioner a Notice of Eligibility Child Care at his correct address stating that he was denied Child Care effective September 1, 2012, due to failure to timely provide verification to the respondent. See, Exhibit 4. That notice indicated that petitioner must file any request for a hearing before the Division of Hearings and Appeals (DHA) by October 22, 2012. The petitioner did not request a fair hearing with DHA within the 45 day period following the September 6, 2012 notice of denial of child care benefits.
6. The petitioner mailed an appeal letter to DHA dated November 7, 2012, and which was received at DHA on November 8, 2012 regarding the discontinuance of his child care benefits. The envelope of that appeal letter was date stamped November 7, 2012 by the post office.
7. There is no evidence in the record that petitioner requested any DHA hearing prior to November 7, 2012, regarding the September 6, 2012 notice of discontinuance of his child care benefits.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. WI Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest childcare assistance was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development has changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, DWD Operations Memo, #03-66. See WI Stat § 49.152(2) & WI Stat § 227.42, et. seq. As a result, if a client is initially notified of the discontinuance or negative action regarding the client’s child care benefits for a child before November 24, 2003, the issue is subject to the W-2 fact finding process. In this case, the notices were sent to petitioner during September, 2012, and therefore the fair hearing procedure is properly being followed.

An Administrative Law Judge (ALJ) 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 MA or **childcare must be filed within 45 days of the date of the action**. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or a **denial or discontinuance of payment of childcare benefits**. In this case, the negative action was the denial of petitioner’s child care benefits due to petitioner’s failure to provide requested verification documentation. The petitioner argued that he was awaiting the finalization of his divorce, and this led to the delay in responding to the verification request. Unfortunately, that point is moot since the appeal was not timely filed.

The county agency sent a September 6, 2012 notice to the petitioner at his correct address stating that he was denied for Child Care benefits effective September 1, 2012. See, Exhibit 4. Petitioner filed his appeal with DHA sixty-two days later. Accordingly, the Division of Hearings and Appeals has no subject matter jurisdiction in this case. I note that administrative law judges do not have the power to address issues of fairness or equity. We are required to apply the law as written.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the county agency's September 6, 2012, notice of denial of petitioner's child care benefits, as petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 Milwaukee,
Wisconsin, this 3rd day of April, 2013

\sPeter W. McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 April 3, 2013.

Racine County Department of Human Services
Child Care Benefits