



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/145878

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Sauk County Department of Human Services in regard to Child Care, a hearing was held on January 03, 2013, at Baraboo, Wisconsin.

The issue for determination is whether the petitioner's appeal of the April 1, 2011 discontinuance of her child care benefits was timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] A. [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sherry Brickl

Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.

2. Petitioner applied for Child Care assistance on June 14, 2012. Following a denial based upon petitioner's failure to provide verification within 30 days, petitioner reapplied on July 23, 2012. Exhibit 2.
3. On August 23, 2012, the respondent sent petitioner a Notice of Eligibility Child Care denying benefits, and indicating that the income counted for petitioner's household exceeded the program limit. That notice further stated that, "[y]our request for a fair hearing review must be submitted by October 8, 2012. Exhibit 3.
4. On September 26, 2012, the respondent sent petitioner a Notice of Eligibility Child Care denying benefits, and indicated that a caretaker is not completing approved Child Care activities. That notice further stated that, "[y]our request for a fair hearing review must be submitted by November 12, 2012. Exhibit 3.
5. Petitioner's Request for Fair Hearing was executed by Petitioner and received by the Division of Hearings and Appeals on December 12, 2012. Exhibit 1.

DISCUSSION

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 effective August 1, 2012, and September 1, 2012.

The county agency sent denial notices to the petitioner at her correct address stating that her child care benefits were denied. See Exhibit 3. The petitioner has not alleged that she failed to receive the notices. Therefore, based upon the established facts and the entirety of the record, I conclude that petitioner received proper notice of the August, 2012, and September, 2012 Child Care benefit denials, but failed to appeal said denials within the 45-day time limit. Accordingly, the Division of Hearings and Appeals has no subject matter jurisdiction in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the county agency's August 1, 2012 and September 1, 2012, denials of petitioner's child care benefits requests, 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 Madison,
Wisconsin, this 26th day of March, 2013

\sPeter McCombs
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 March 26, 2013.

Sauk County Department of Human Services
Child Care Benefits