



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/146653

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on April 24, 2013, at Milwaukee, 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]
[REDACTED]
[REDACTED]

Respondent:

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

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 28, 2012, the Department sent two written notices of negative action to the petitioner. Specifically, the Department issued a Child Care (CC) Overpayment Notice, alleging that the petitioner was overpaid \$1,741.37 in CC for the March 18, 2012, through July 29, 2012,

period. Exhibit A1. A second Child Care (CC) Overpayment Notice, also dated November 28, 2012, alleged that the petitioner was overpaid \$5,533.69 in CC for the April 24, 2011, through August 31, 2011, period. Exhibit A2.

3. The CC overpayment notices specified that petitioner had a right to a fair hearing. The notices further stated that the request must be received by the Division of Hearings and Appeals within 45 days of the effective date of the notice.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 17, 2013.

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 Child Care Benefits must be filed within **45** days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), Wis. Admin Code §HA 3.05(3); a longer deadline is not specified in policy in the Department's *Child Care Policy Manual*, at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. A negative action can be the denial of an application or a denial of payment of Child Care Benefits. Because the petitioner's appeal was filed 50 days after the agency's negative action concerning Child Care benefits, it is untimely.

Petitioner argues that she gave birth in December of 2012, and spent additional days in the hospital following some medical issues related to the birth. All totaled, petitioner testified that she spent 7 days in the hospital. Petitioner concedes receipt of the notices, and while I empathize with her difficulty labor and delivery, I cannot conclude that the seven days of hospitalization during the 45 day appeal period somehow absolves her from her responsibility to comply with the published and noticed appeal deadline.

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 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 14th day of May, 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 May 14, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud