



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/147039

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Oneida County Department of Social Services in regard to Child Care, a hearing was held on March 05, 2013, at [REDACTED], Wisconsin.

The issue for determination is whether the Department erred in terminating petitioner's childcare benefits effective November 1, 2012.

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: Amy Mayo

Oneida County Department of Social Services  
Oneida Avenue  
PO Box 400  
[REDACTED], WI 54501

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. Petitioner was previously receiving child care benefits in another county.

3. She moved to Oneida County and contacted her agency on September 11, 2012 to inform them of the move.
4. On September 27, 2012, the Department sent petitioner a notice to her correct address in [REDACTED] indicating that her case had been transferred to the Central Consortium. The notice indicated in boldface type: **Action Needed: Contact your Agency if you receive W-2 or Child Care Benefits.** The notice continued: *If you have moved to a new county and are receiving W-2 or Child Care Benefits, you must contact the W-2/County/Tribal agency in your new area. If you do not contact the agency your W-2 and/or Child Care payments and services may end.*
5. On October 2, 2012, petitioner called the agency to inform them of a change in child care provider.
6. On October 11, 2012, the agency reviewed case and entered the authorization for the new provider.
7. On October 11, 2012, the petitioner again contacted the agency and informed them of another change in child care providers. Petitioner provided her phone number and detailed information about providers and dates attended.
8. On October 19, 2012, the Department sent a notice to petitioner indicating that her CC benefits would end on November 1, 2012. The notice indicated that she was to contact the local agency.
9. On October 25, 2012, petitioner contacted the agency to give the name of the new provider. The agency took the new information and indicated that the hours would remain the same.
10. On November 18, 2012, the agency attempted to update the provider information. The agency learned that the case had closed. The worker noted in the case comments that "case was due for a review by 10/31/12, but no notice was sent to client.
11. Petitioner filed a new application for Child Care on January 3, 2013. The case was opened.
12. Petitioner filed a timely request for hearing from the November 1, closing of her case.

### DISCUSSION

Wis. Stat. § 49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. 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. Wis. Stat. § 49.155(1m). As such, W-2 child care assistance is a type of Wisconsin Works benefits. The department has a Wisconsin Shares Child Care Assistance Manual (Child Care Manual) that provides the specific activities, policies and eligibility requirements (including a discussion of income limits and other non-financial requirements) to qualify for the program. <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>

A parent is eligible for child care services if he/she needs the care to: (1) Work in an unsubsidized job, including training provided by an employer during the hours of employment; (2) Participate in other employment skills training, if the W-2 agency determines that the course would aid the person's efforts to obtain employment. Child Day Care Manual, Chapter 1, § 1.5.0 et al. Furthermore, to determine child care eligibility, the county worker may request verification of income and work hours to determine the number of child care hours necessary each week. Child Day Care Manual, Chapter 1, § 1.6.0.

In a Fair Hearing concerning the propriety of a discontinuance of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

In this case, the negative action was the county agency's determination that petitioner was ineligible to receive child care benefits effective November 1, 2012, due to her failure to complete her eligibility review.

The problem here is that the notice mailed to the petitioner on September 27, 2012 did not inform her that she needed to complete a review. It only informed her that she needed to contact the agency. She clearly did that on multiple occasions to inform the agency of new providers. The agency changed the providers in its system. Even the agency appears to have been surprised when the case closed. Apparently, this closing was a result of some process outside the actions of the agency.

As for the notice sent October 19, it did inform petitioner that CC would be ending due to failure to complete a review. Again though, it simply informed petitioner to contact the local agency if she would like to continue receiving CC. Petitioner did contact the agency on 10/25/12. Case comments of the agency indicate that she called. The Notice did not indicate (as such notices do in BadgerCare review cases) that if a review is not completed then the benefits will terminate. It simply says to contact the local agency.

I find that petitioner received no adequate notice that a review was to be completed as a result of the September notice. The review was not a periodic review of which petitioner could be expected to realize was due. This was a review only required due to her relocation. Critically, the notice sent to her was ambiguous at best. She should not lose benefits because she did not take some action she was not instructed to take. The notice only said to contact the agency. She did that. Had petitioner taken no actions and made no contact with the agency, this case would likely have a different result. But, it is apparent on these facts that this petitioner would have taken required steps if such steps were clear to her.

### **CONCLUSIONS OF LAW**

The Department did not adequately inform petitioner that a review was due and, thus, cannot deny benefits based on a lack of review.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department and its county agent with instructions to grant Child Care benefits for the months of November and December 2012, and to reverse any other negative action resulting from petitioner's failure to complete a review that was due by 10/31/12. These actions must be completed within 10 days.

### **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 15th day of May, 2013

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\sJohn P. Tedesco  
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 15, 2013.

Oneida County Department of Social Services  
Child Care Benefits