



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/147372

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, the parties appeared on June 19, 2013, at Milwaukee, Wisconsin at which time the Department made an oral motion to dismiss the matter based on untimeliness. Both parties were previously unaware of this potential jurisdictional problem and agreed to file written submissions with exhibits. After the submission of written arguments, this ALJ asked for additional response which was received on July 31, 2013.

The issue for determination is whether the appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Patricia Delessio
230 West Wells Street Room 800
Milwaukee, WI 53203

Respondent:

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

By: Attorney Joseph McCleer
Department of Children And Families
1220 W. Vliet St. 2nd Floor
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On December 19, 2012, the Department mailed notice to petitioner informing her of a CC overpayment in the amount of 472.55. The notice provided 45 days to file an appeal. The Notice was mailed to [REDACTED] address which was the address on file for petitioner.
3. The Department sent a Repayment agreement relating to the same claim to petitioner at the same address on January 3, 2013.
4. The Department sent an additional notice to petitioner at the same address on February 4, 2013. This notice reminded petitioner to make payment or complete the repayment agreement previously mailed to her.
5. Petitioner filed a request for hearing on February 18, 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), WI Admin Code §HA 3.05(3), Child Day Care Manual Chapter 2, § 2.5.0. A negative action can be the denial of an application, a denial of payment of Child Care Benefits, or the recoupment of an alleged overpayment of child care benefits.

Petitioner argued that she did not receive the December 19 notice and that she acted with due diligence upon first learning of the overpayment from the February 4, 2013 notice. Petitioner further argues that her affidavit asserting such diligence and non-receipt should rebut the legal presumption that a properly mailed letter is received by the addressee. But, such argument would also require me to believe that the properly addressed January 3 Repayment Agreement was also lost in the mail. Unfortunately, I cannot believe that two consecutive mailings pertaining to the petitioner's alleged debt were both lost in the mail. I think it is much more likely that after three notices about this issue the petitioner finally took the action seriously and took action. The presumption of receipt is not rebutted under these facts.

Because the petitioner's appeal was filed 61 days after the county agency's negative action concerning Child Care Benefits, it is untimely.

CONCLUSIONS OF LAW

The appeal is not timely and the DHA does not have jurisdiction to consider the merits.

THEREFORE, it is

ORDERED

That this appeal 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 1st day of August, 2013

\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 August 1, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
pdl@legalaction.org
Joseph.McCleer@wisconsin.gov