



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/147877

PRELIMINARY RECITALS

Pursuant to a petition filed March 05, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Marathon County Department of Social Services in regard to Child Care, a hearing was held on April 09, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Department erred in its failure to backdate child care benefits to January 1, 2013.

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: Maikou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner called the agency on 1/8/13 to request a child care program application. The agency sent an application.
3. Petitioner applied for child care (CC) benefits on 2/21/13 at the agency office.

4. An appointment was held on 2/28/13. At the time of the appointment, petitioner was no longer employed and ineligible for CC.
5. On 3/1/13 the Department sent notice informing petitioner that CC was denied.
6. Petitioner filed an appeal.

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. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development 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 also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

If a person is found eligible, the applicability of benefits may be backdated only to the beginning of the month of the application. *Manual* at § 1.3.6.

In this case, the application was not submitted to the agency until February 21, 2013. Petitioner concedes this fact. Petitioner argues in her request for hearing that the process was delayed at the agency and that an application was not sent timely when initially requested on 1/8/13. Petitioner offered no evidence to support this contention however. Petitioner stated at the time of hearing that she called the agency in January and asked for the application but it was never received. Petitioner then explained that she went into the agency on February 21, 2013 and applied in person. Even if this were so, petitioner did not explain why she waited from January 8 to February 21 for the application. One would reasonably inquire again after a few days or a week if the application had not been received. That petitioner waited six weeks for the application to come in the mail cannot result in a finding of error on the part of the agency.

CONCLUSIONS OF LAW

The Department did not err in denying eligibility for CC back to January 2013.

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 14th day of June, 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 June 14, 2013.

Marathon County Department of Social Services
Child Care Benefits