



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTS/148593

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 09, 2013, under Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Paul Frederickson  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a reduction in the amount of her Caretaker Supplement (CTS) benefit effective February 1, 2013. She was sent a Notice of Decision dated January 18, 2013 that informed her that those benefits were being reduced from \$700 to \$400 per month. The

notice was sent to Petitioner at the above address and contains appeal instructions noting the appeal deadline to be March 19, 2013.

3. The reason for the CTS reduction was that two of Petitioner’s children were removed from her case when the father reported that those two children lived with him.
4. In January 2013 the father of the two children removed from Petitioner’s CTS case provided a copy of a letter from the children's schools indicating that those two children resided with her father.
5. Petitioner provided the agency with a court order indicating that she had primary placement of the children and the agency reversed the CTS reduction; restoring her full CTS benefits effective, per CTS payment history obtained post hearing, March 1, 2013.
6. The record was held open to give Petitioner an opportunity to submit additional records. She did so. Among those records was a May 13, 2013 court order continuing a prior court order from December 2011 which indicated that the children lived with Petitioner. Further, the May 2013 court order notes that was the response to the father's motion to change placement and that he failed to provide evidence sufficient to overcome the prior (2011) court order.

**DISCUSSION**

The Division of Hearings and Appeals can only make a determination on the merits of a matter if there is jurisdiction, i.e., legal authority, to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department or a county agency concerning Medical Assistance, State SSI, or Caretaker Supplement benefits must be filed within 45 days of the date of the action. See Wis. Stat. § 49.45(5); Wis. Admin. Code §§HA3.02(15) & 3.05(3); *Caretaker Supplement Handbook*, §4.7 (July 2009), at <http://www.emhandbooks.wi.gov/cts/>. A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In reviewing this case for this decision it became apparent that the appeal is untimely to challenge the February 1, 2013 reduction in CTS benefits. I note that the companion FoodShare case has a different appeal deadline and was dealt with in a separate decision that was in Petitioner’s favor. Nonetheless, the CTS standards must be applied to the CTS case and, again, the appeal is not timely. This does not, however, prevent the agency from taking corrective action on its own.

**CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals is without authority to make a determination on the merits of this matter as the appeal is not timely.

**THEREFORE, it is**

**ORDERED**

That this matter 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 Health Services. 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: 1 West Wilson Street, 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 Milwaukee,  
Wisconsin, this 24th day of July, 2013

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\sDavid D. Fleming  
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 July 24, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability