



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/148639

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 11, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on May 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the April 1, 2011 discontinuance of her child care benefits was timely.

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: Belinda Bridges

Milwaukee Enrollment Services  
1220 W Vliet St  
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. Milwaukee Enrollment Services (MES) sent a February 5, 2013 Notice to the petitioner at her correct address stating that she was denied for Child Care beginning January 1, 2013. Exhibit 3,

- p. 12. That notice indicated that petitioner must file any request for a hearing before the Division of Hearings and Appeals (DHA) by March 22, 2013. The petitioner did not request a fair hearing with DHA on or before March 22, 2013.
3. On April 11, 2013, the petitioner submitted, via facsimile, a Request for Fair Hearing dated April 11, 2013. Exhibit 1.
  4. There is no evidence in the record that petitioner requested any DHA hearing prior to April 11, 2013, regarding the January 1, 2013 discontinuance of her child care benefits.

### 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. WI Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest childcare assistance was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development has 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 WI Stat § 49.152(2) & WI Stat § 227.42, et. seq. As a result, if a client is initially notified of the discontinuance or negative action regarding the client's child care benefits for a child before November 24, 2003, the issue is subject to the W-2 fact finding process. In this case, the notice was sent to petitioner in February, 2013, and therefore the fair hearing procedure is properly being followed.

An Administrative Law Judge (ALJ) 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 a county agency concerning MA or **childcare must be filed within 45 days of the date of the action**. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or a **denial or discontinuance of payment of childcare benefits**. In this case, the negative action was the February 5, 2013, denial of petitioner's child care benefits effective January 1, 2013.

The county agency sent a February 5, 2013, notice to the petitioner at her correct address stating that her child care benefits were denied effective January 1, 2013. During the hearing, this administrative law judge (ALJ) asked the petitioner why she waited until April 11, 2013 to submit her appeal to DHA regarding the February 5, 2013 notice regarding her child care benefits. She responded that she was delayed because her landlord took so long to get a lease to her. Providing timely verification is the petitioner's responsibility. She further noted that she didn't recall receiving the February 5, 2013 notice. The record does not indicate that petitioner has otherwise established failure to receive correspondence from the respondent; I find her lack of recall regarding this notice to be convenient and self-serving. I conclude that the petitioner was unable to provide any good cause excuse for why she waited until April 11, 2013, to file her appeal. Accordingly, the Division of Hearings and Appeals has no subject matter jurisdiction in this case.

### CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the county agency's February 5, 2013, denial of petitioner's child care benefits effective January 1, 2013, as petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 8th day of August, 2013

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\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 August 8, 2013.

Milwaukee Enrollment Services  
Child Care Benefits