



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/149740

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care (CC), a hearing was held on June 26, 2013, at Madison, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

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: Liza Ingrilli, ES Worker
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner was receiving CC benefits in September through November, 2012. On September 24, 2012, the agency mailed a letter to the petitioner correctly advising that her Six Month Report

Form (SMRF) for CC was due in November 2012, and that a SMRF would be sent to her in October.

3. A SMRF was not issued to the petitioner in October or November 2012. Also, a notice advising the petitioner of closure of her CC case for failure to file a SMRF was not issued at any time relevant hereto. The petitioner's CC program eligibility was not discontinued.
4. On November 26, 2012, a Case Authorization Notice was issued to the petitioner, advising that her CC authorization was ending on December 1, 2012, and that she should contact the county agency for a new authorization. The Case Authorization Notice also correctly advised the petitioner of her appeal rights, and that her deadline for appealing the end of her authorization was January 10, 2013. *See*, Exhibit 1.
5. The petitioner contacted the agency on January 23, 2013, to inquire as to the status of her CC benefits. The agency worker advised the petitioner to file a new CC application. Also, the county agency attempted to create a CC authorization for CC retroactively to December 1, 2012. The agency did not succeed in this endeavor. The agency contacted a state-level CC coordinator and explained the situation. The coordinator's response was that the petitioner received the authorization ending letter of November 26, 2012, instructing her to contact her worker for a new authorization, and that the authorization end date would remain 12-01-2012. She further advised that a new review needed to be completed.
6. The petitioner completed a CC review on May 30, 2013, and a CC authorization was created with an effective date of May 5, 2013. The petitioner seeks a CC authorization for the December 1, 2012 through May 4, 2013, period in this appeal. The petitioner was financially and nonfinancially eligible for CC throughout the contested period.
7. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on May 31, 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. Wis. Stat. § 49.152(1), Wis. Admin. Code §HA 3.05(3). A negative action can be the denial of an application, or denial or termination of payment authorization for Child Care benefits.

Eligibility for potential payment by the program is a different issue than actual authorization for payment (which is contingent upon, among other things, the actual number of hours being worked by the recipient). If the petitioner had timely filed her appeal to challenge the end of her authorization on December 1, I would have been strongly inclined to authorize benefits from December 1, 2012 through the date of the contact on January 23, 2013, when she was advised to file a new application. Because the petitioner's appeal was filed *181* days after the county agency's negative action concerning Child Care benefit authorization, it is untimely, and I cannot reach this authorization issue.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 25th day of September, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 25, 2013.

Dane County Department of Human Services
Child Care Benefits