



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/151209

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 09, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on September 05, 2013, at Milwaukee, Wisconsin. The record was held open after the hearing for 12 days to allow the Petitioner time to submit additional evidence. On September 17, 2013, the Petitioner submitted a one page fax. The record closed on September 17, 2013.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,903.83 for the period of November 1, 2011 – March 31, 2012.

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: Lareina Horton

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On June 21, 2013, the agency issued a Child Care Client Overpayment Notice and worksheet to the Petitioner at [REDACTED], 109, Milwaukee, WI 53207. The notice informed the Petitioner that the agency determined she was overissued child care benefits in the amount of \$2,903.83 for the period of November 1, 2011 – March 31, 2012 and the agency intends to recover the overissuance. The notice also informed the Petitioner of her right to request a fair hearing within 45 days of the date of the letter.
3. On June 24, 2013, the agency issued a Child Care Overpayment Notice to the Petitioner at [REDACTED], 109, Milwaukee, WI 53207. The notice was issued in Spanish.
4. On August 9, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning an overissuance of child care benefits must be filed within 45 days of the date of the action. Wis. Stats. § 49.195 and Wis. Admin. Code DCF Chapter 101. The Petitioner's appeal was filed 46 days after the date of the action. The agency moved to dismiss the matter as untimely. Though it is just one day late, the agency is correct that the appeal was not timely filed and therefore no jurisdiction exists for me to consider the merits of the case. As dicta, I note that the Petitioner's post-hearing submission from the landlord of the property was contradictory with regard to the residence of EP (the father of her children) from a previous submission to the agency from the same landlord. Therefore, it is unlikely that the additional evidence would have been sufficient to rebut the agency's position.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was untimely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 Milwaukee,  
Wisconsin, this 3rd day of December, 2013

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\sDebra Bursinger  
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 December 3, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
[Annen.Robert@Countyofdane.com](mailto:Annen.Robert@Countyofdane.com)