



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/153605

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on December 16, 2013, at Kenosha, 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: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On August 20, 2013, the Kenosha County Human Service Department sent Petitioner a Child Care Overpayment Notification Claim Number [REDACTED], indicating that she was overpaid Child Care benefits in the amount of \$2701.03 for the period of 06/01/03.

3. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 21, 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. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3).

A negative action can be the denial of an application, the reduction of Child Care Benefits, or as in this case, the recoupment of an overpayment.

In the case at hand, the date of negative action was August 20, 2013, the date of the overpayment notice. Petitioner did not file her appeal until November 21, 2013, which was 93 days after the date of negative action. Consequently, Petitioner's appeal is untimely and there is no jurisdiction to consider the merits of Petitioner's appeal.

Petitioner testified that she did not get the not get August 20, 2013 overpayment notice, which was sent to [REDACTED]

Where the evidence presented by the agency demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received. *See State ex. Rel. Flores v. State*, 183 Wis.2d 587, at 612-613 (1994). In the case at hand, the overpayment notice was sent to the [REDACTED] address. The Petitioner testified that she did receive the September 4, 2013 repayment agreement at that same address and did not provide an explanation for why she would not have received her mail. As such, it is found that the overpayment notice was received timely.

It should be noted that Petitioner testified to receiving a different childcare overpayment notice in June 2013, so should have been aware of her right to appeal when she received the September 4, 2013 repayment agreement. Still she waited over 60 days from date of the repayment agreement to file her appeal.

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

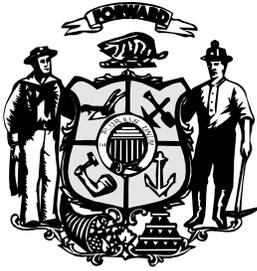
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 Milwaukee,
Wisconsin, this 6th day of March, 2014.

\sMayumi M. Ishii
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 March 6, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud