



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/154223

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 14, 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 telephonic hearing was held on January 15, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the October 2, 2013 Child Care overpayment notice from the period of March 10, 2013 to March 31, 2013 is 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: Shawnte Julien, child care worker  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The petitioner resides in a household of three with her child, MS.
2. The petitioner received Childcare benefits for her child during the period of March 10, 2013 to March 31, 2013.

3. The county agency sent October 2, 2013 and October 3, 2013 Child Care Overpayment Notices to the petitioner stating that the household had received an overpayment of \$730.80 in child care benefits during the period of March 10, 2013 to March 31, 2013, because petitioner continued to utilize child care services while not in any approved W-2 activity. As a result of petitioner's child continuing to attend child care, an overpayment in the amount of \$730.80 was created. See Exhibit 1. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 45 days of the date of that October 2, 2013 overpayment notice.
4. The petitioner admitted receiving her October 2, 2013 child care overpayment notice (Exhibit 1).
5. The petitioner mailed an appeal to the Division of Hearings and Appeals(DHA) on December 14, 2013, which was received at DHA on December 17, 2013.
6. There is no reliable evidence in the hearing record that petitioner requested a DHA appeal regarding her child care overpayment prior to December 14, 2013.

### DISCUSSION

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 Child care benefits, BadgerCare or Medical Assistance (MA) 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.** An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). 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 an overpayment notice. In this case, the negative action was the October 2, 2013 child care overpayment notice sent to the petitioner.

During the January 15, 2014 hearing, petitioner admitted that she had received the October 2, 2013 child care overpayment notice. There was no evidence that anyone at the county agency attempted to prevent petitioner from filing a timely appeal at DHA. The petitioner was unable to provide any valid reason or good cause for not filing an appeal with DHA during the 45 day period (until November 17, 2013) after receiving the October 2, 2013 overpayment notice. The petitioner explained that she did not fully understand the appeal process, and was very busy with other responsibilities. However, such confusion or busy schedule does not establish good cause for a late appeal. Accordingly, for the above reasons, I must conclude that because petitioners did not appeal her October 2, 2013 Child Care overpayment notices within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the October 2, 2013 child care overpayment notice at issue in this case.

### CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the October 2, 2013 child care overpayment notice to the petitioner, as the 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

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of March, 2014

---

\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on March 24, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud