



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/154300

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services 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 denial of her application for child care benefits for the month of September, 2013 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: Pang Thao-Xiong, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
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 who resides with her one child.
2. On September 5, 2013, petitioner applied for child care benefits for her one child.

3. Milwaukee Enrollment Services (MES) notified petitioner that she must complete her required child care application interview, and scheduled interview appointments with petitioner for September 12, 2013 and September 26, 2013.
4. Petitioner did not complete her required interview until October 11, 2013.
5. Milwaukee Enrollment Services (MES) sent a September 27, 2013 Notice of Decision to the petitioner at her correct address stating that her child care application was denied due to failure to timely complete her required child care interview. See Exhibit 4. That notice indicated that petitioner must file any request for a hearing before the Division of Hearings and Appeals (DHA) within 45 days of that notice. The petitioner did not request a fair hearing with DHA within the 45 day period regarding the September 27, 2013 denial of her child care application.
6. Milwaukee Enrollment Services (MES) sent an October 8, 2013 Notice of Decision to the petitioner at her correct address stating that her child care application was denied due to failure to timely complete her required child care interview. See Exhibit 1. That notice indicated that petitioner must file any request for a hearing before the Division of Hearings and Appeals (DHA) within 45 days of that notice. The petitioner did not request a fair hearing with DHA within the 45 day period regarding the October 8, 2013 denial of her child care application.
7. MES approved the petitioner's child care benefits as of October 1, 2013.
8. The petitioner mailed an appeal letter to DHA dated "11/1/13" but that letter was postmarked by the post office as mailed on December 17, 2013 regarding the denial of her child care benefits for the month of September, 2013. That appeal letter was date stamped as received at DHA on December 19, 2013.
9. There is no evidence in the record that petitioner requested any DHA hearing prior to December 17, 2013 regarding the denial of her child care benefits for the month of September, 2013.
10. The petitioner's child care benefits began as of October, 2013.

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 notices were sent to petitioner during 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. 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 a denial or discontinuance of payment of childcare benefits. In this case, the negative action was the denial of petitioner's child care

benefits for the month of September, 2013, due to petitioner not timely completing her required child care interview.

MES sent notices to the petitioner at her correct address on September 27, 2013 and October 8, 2013 stating that her child care application was denied. See Exhibits 1 and 4. The petitioner alleged unconvincingly that she did not receive those notices. However, both notices were sent to the petitioner at her correct address and were not returned to MES as undeliverable. In addition, petitioner alleged problems with her mail delivery, but was unable to establish any evidence of such problems with her mail delivery. The petitioner's testimony was not credible regarding non-receipt of Exhibits 1 and 4. See also Finding of Fact #8 above.

During the hearing, petitioner was unable to provide any good cause excuse for why she waited until December 17, 2013 to mail her appeal to DHA. She also was unable to provide any good cause for waiting more than one month after the 45 days deadline for the child care application denial notice to file her appeal with DHA. Therefore, for the above reasons, I conclude that petitioner received the notices of September 27, 2013 and October 8, 2013, but failed to appeal her childcare appeal within the 45-day time limit without establishing any good cause. Accordingly, the Division of Hearings and Appeals has no subject matter jurisdiction in this case regarding the denial of petitioner's child care for the month of September, 2013.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding petitioner's appeal of the denial of her application for child care benefits for the month of September, 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

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 10th day of April, 2014

\sGary M. Wolkstein
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 April 10, 2014.

Milwaukee Enrollment Services
Child Care Benefits