



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/154767

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Eau Claire County Department of Human Services in regard to Child Care, a hearing was held on February 19, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner had not filed an application for Child Care benefits.

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: Mary Myers

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner returned to work on October 8, 2013. She filed an application for Child Care benefits that month. She refiled the application on December 23, 2013.

3. The county agency has misplaced the petitioner's applications for benefits.

DISCUSSION

The Wisconsin Shares Child Care program provides Child Care assistance to W-2 participants who are employed or in other approved activities. Wis. Stat. § 49.155. The petitioner's benefits were discontinued because she stopped working. She contends that she reapplied online when she returned to work on October 13, 2013. The agency contends it never received this application. She testified that she then went into the county agency and filed an application in December 2013. The agency contends that it did not receive this application either. The worker who testified to this is honest (she has appeared in front of me for over a decade). Nevertheless, the evidence is overwhelming that the petitioner applied for benefits. When filing the December application, she remembers speaking to a thin worker about 5'7" tall with sandy blonde hair. She also provided a copy of her application date-stamped December 30, 2013. Finally, she has a Notice of Eligibility from Team Family 1 dated December 31, 2013, indicating that she is eligible for benefits for December 2013 and January 2014. The worker testified that she was unaware of either document. If the petitioner has a notice indicating that her benefits have been approved, the odds are overwhelming that the agency received an application. The most reasonable explanation concerning why it no longer can find the application and decision on that application is that it misplaced them. The petitioner has the burden of proving by the preponderance of the credible evidence that she is eligible for Child Care benefits. Her accurate testimony about the December application along with the agency's apparent misplacing of that application convince me that she also testified accurately about filing for benefits in October 2013. Child Care eligibility can begin retroactive to first day of the month of application. *Day Care Manual*. § 1.3.6. I will order the county agency to determine her benefits retroactive to October 1, 2013. If it denies benefits to her, it cannot base that denial on the lack of an application. The petitioner can appeal any such denial.

CONCLUSIONS OF LAW

The petitioner is entitled to have her eligibility for Child Care benefits determined retroactive to October 8, 2013, because the preponderance of the credible evidence indicates that the county agency has lost her October 2013 application for benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it determine the petitioner's eligibility for Child Care benefits retroactive to October 8, 2013. The agency can delay this determination if it requires additional information to make it. If the agency requires additional information to determine the petitioner's eligibility, it shall request that information from her within 10 days of the date of this decision and she shall provide this information within 10 days of receiving the request. The agency shall then make the determination within 10 days of receiving this information. The agency shall certify the action it has taken to the Division of Hearings and Appeals within 30 days of the date of this decision. This period can be extended if the petitioner requires additional time to verify her information and agrees to leave the record open. If the petitioner disagrees with the agency's decision, she may file a new appeal.

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 3rd day of March, 2014

\sMichael D. O'Brien
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 3, 2014.

Eau Claire County Department of Human Services
Child Care Benefits