



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/155246

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services in regard to Child Care, a hearing was held on March 18, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the petitioner's appeal of her childcare overpayment 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: Diane Van Asten

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The petitioner received childcare assistance for her three children during the period of June 1, 2012 through September 30, 2012.

3. On or about September 26, 2013, the respondent Child Care (CC) Overpayment Notices and Worksheets (Claim # [REDACTED]) to the petitioner's correct address informing her that she had been overpaid \$3,201.40 in child care assistance from June 1, 2012 through September 30, 2012, due to client error (petitioner failed to report accurate household members). Exhibit 2. Petitioner received Exhibit 2. Those notices informed petitioner that she must file a request for a fair hearing within 45 days of that notice.
4. The petitioner filed her appeal via a written Request for a Fair Hearing, which was postmarked January 31, 2014. Exhibit 1.
5. There is no evidence that petitioner requested any hearing prior to January 31, 2014, regarding her childcare overpayment.

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 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. 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 September 26, 2014, notification to petitioner that she received an overpayment of childcare benefits in the amount of \$3,201.40 in child care assistance from June 1, 2012 through September 30, 2012. Exhibit 2.

When this administrative law judge asked petitioner why she waited until January 31, 2014, to file her appeal with the Division of Hearings and Appeals, she explained that she was in the process of moving and looking for a new place to stay. The January 31, 2014, appeal was filed 127 days after the September 26, 2013, notice. The petitioner was unable to establish any good cause for the delay. Accordingly, I must conclude that because petitioner did not appeal her childcare overpayment within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction in this case.

CONCLUSIONS OF LAW

There is no jurisdiction regarding the petitioner's childcare overpayment (Claim # [REDACTED]) in the amount of \$3,201.40 from June 1, 2012 through September 30, 2012, 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 30th day of May, 2014

\sPeter McCombs
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 May 30, 2014.

Brown County Human Services
Public Assistance Collection Unit
Child Care Fraud