



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/155285

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on March 13, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open until March 24, 2014 for petitioner's submission of income verification (paystubs) to OIG for review and then for petitioner's written closing argument. Upon review of petitioner's submission, OIG would then by April 10, 2014 submit its closing argument to DHA with a final opportunity for a Reply statement by petitioner to DHA by April 17, 2014. The petitioner failed to submit her income verification to OIG, and provided no explanation as to why it failed to do so. OIG timely submitted its closing argument to DHA (and to the petitioner) which is received into the hearing record.

The issue for determination is whether the petitioner's appeal of the December 12, 2013 Child Care overpayment notice from the period of June 1, 2012 to September 30, 2013, is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Desarae Robinson, fraud investigator
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 with her six children.
2. The petitioner received Childcare benefits for her children during the period of June 1, 2012 to September 30, 2013.
3. The county agency sent December 12, 2013 and December 13, 2013 Child Care Overpayment Notices to the petitioner at her correct address stating that the household had received an overpayment of \$8,344.49 in child care benefits during the period of June 1, 2012 to September 30, 2013, due to petitioner's failure to timely report changes in her household income and failure to timely report changes in the number of work or approved activity hours. As a result of petitioner's children continuing to attend child care, an overpayment in the amount of \$8,344.49 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 December 12, 2013 overpayment notice. See Exhibit 1.
4. The petitioner did not dispute receiving her December 12, 2013 or December 13, 2013 child care overpayment notices.
5. The petitioner faxed an appeal to the Division of Hearings and Appeals (DHA) on February 6, 2014, which was received at DHA on February 6, 2014.
6. There is no reliable evidence in the hearing record that petitioner requested a DHA appeal regarding her child care overpayment prior to February 6, 2014.

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 December 12, 2013 child care overpayment notice sent to the petitioner.

During the March 13, 2014 hearing, petitioner did not dispute that she had received the December 12, 2013 or December 13, 2013 child care overpayment notices. 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 January 28, 2014) after receiving the December 12, 2013 overpayment notice. The petitioner explained that she 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 December 12, 2013 Child Care overpayment notice within the 45-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the December 12, 2013 child care overpayment notice at issue in this case.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the December 12, 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 July, 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 July 24, 2014.

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