



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
[REDACTED]
CCB/157165

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Outagamie County Department of Human Services in regard to Child Care, a telephonic hearing was held on July 29, 2014, at Appleton, Wisconsin. At the request of petitioner, hearings set for June 30, 2014 and July 9, 2014 were rescheduled.

The issue for determination is whether the petitioner’s appeal of the discontinuance of her child care benefits effective January 1, 2014 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: Sandy Hurtado, ESS
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County who resides with her two children. Her husband, [REDACTED], joined her household as of about January 30, 2014. See Exhibit 3.
2. The petitioner received child care benefits for her two children.

3. The county agency sent a December 3, 2013 verification request to the petitioner requesting verification of required financial and non-financial information to the agency by December 13, 2013. See Exhibit 2.
4. The county agency sent a December 16, 2013 Notice of Decision to the petitioner at her correct address stating that her child care benefits would be discontinued effective January 1, 2014, due to failure to timely provide requested verification to the county agency. 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 (by February 17, 2014). The petitioner did not request a fair hearing with DHA within the 45 day period regarding the January 1, 2014 discontinuance of her child care benefits. The petitioner admitting received Exhibit 1.
5. The petitioner faxed an appeal letter to DHA dated April 28, 2014 which was received at DHA on April 28, 2014 regarding the January 1, 2014 discontinuance of her child care benefits. See Exhibit 5.
6. There is no evidence in the record that petitioner requested any DHA hearing prior to April 28, 2014 regarding the January 1, 2014 discontinuance of her child care benefits.

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 December, 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 discontinuance of petitioner's child care benefits effective January 1, 2014, due to petitioner failing to timely verify required financial and non-financial information to the county agency.

The county agency sent a December 16, 2013 notice to the petitioner at her correct address stating that her child care benefits were ending effective January 1, 2014. See Exhibit 1. The petitioner admitted receiving Exhibit 1. The petitioner also admitted receiving the December 3, 2013 verification request. See Exhibit 2. During the hearing, this administrative law judge (ALJ) asked the petitioner why she waited until April 28, 2014 to fax her appeal to DHA regarding the January 1, 2014 discontinuance of her

child care benefits. The petitioner was unable to provide any good cause excuse for why she waited until April 28, 2014 to file her appeal, as petitioner's child care benefits ended as January 1, 2014.

Petitioner alleged that she had some conversation with "someone" at the call center, and that she might have misunderstood the alleged comments from that person. In any case, petitioner was unable to provide any documented good cause reason for why she waited until April 28, 2014 to fax her appeal to DHA, if her child care benefits were not paid as of January 1, 2014. She also was unable to provide any good cause for waiting more than two months after the 45 days deadline for the child care discontinuance notice to file her appeal with DHA. Therefore, for the above reasons, I conclude that petitioner received the notice of her January 1, 2014 discontinuance, but failed to appeal her childcare discontinuance 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.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the county agency's January 1, 2014 discontinuance of petitioner's child care benefits, 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 8th day of September, 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 September 8, 2014.

Outagamie County Department of Human Services
Child Care Benefits