



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/158053

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 31, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on July 31, 2014, at Milwaukee, Wisconsin. At petitioner's request, the record was held open until August 10, 2014. Additional documentation was received on August 8, 2014, and added to the record. The petitioner supplied further documentation on September 19, 2014, which was not added to the record.<sup>1</sup>

The issue for determination is whether petitioner's appeal is timely.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Simone Johnson

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

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<sup>1</sup> Petitioner supplied three documents via electronic mail on September 19, 2014. Petitioner did not request an extension of the period to hold open the record, and to the extent that the September 19, 2014, electronic mail could be considered a request to do so, the request is denied. As such the late documents were not considered in this decision. In any case, the later submitted documents appear to pertain to a decision by the respondent to end petitioner's Child Care benefits on a date certain. The documents do not appear to address petitioner's 2013 eligibility.

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner moved from New York to Milwaukee in August, 2013. Petitioner applied for Child Care services on or about August 28, 2013.
3. On or about August 30, 2014, the respondent requested, among other things, that petitioner verify her pregnancy status and Wisconsin residency no later than September 27, 2013.
4. On September 10, 2014, the respondent received pregnancy verification, which indicated that petitioner had a New York address. At that time, the respondent updated petitioner's case to reflect petitioner's New York residence.
5. On September 12, 2013, the county sent notice informing petitioner that her request for Child Care benefits was denied effective August 1, 2013, because she did not reside in Wisconsin. The notice advised petitioner that if she disagreed, she had to appeal to the Division of Hearings and Appeals by October 28, 2013.
6. Petitioner reapplied for Child Care benefits in March, 2014. Child Care was opened effective March 2, 2014.
7. Petitioner filed this appeal on May 31, 2014.

### DISCUSSION

Wis. Stat., §49.155 authorizes the department to operate a Child Care subsidy for Wisconsin Works (W-2) recipients and working parents. The department has a Child Care Assistance Manual that provides the specific policies for the program.

Barring any financial or non-financial household changes, eligibility for Child Care runs for six month periods. Manual, §1.15.3. The recipient must report changes when they occur, but even if there are no changes the recipient's case must be reviewed every six months. Id.

An appeal of a Child Care negative action must be filed within 45 days of the action. Wis. Adm. Code, §HA 3.05(3).

Petitioner's August, 2013, Child Care application was denied on September 12, 2013. The county sent petitioner written notice on that date. Petitioner testified that from the time of application through March or 2014, she was unaware that she did not have Child Care benefits. The record does not reflect that the September 12, 2014, notice was returned to the respondent. It does, however, reflect that petitioner contacted the respondent on March 19, 2014, was informed that her Child Care benefits had never opened, and that she requested a Fair Hearing form at that time. See, Exhibit 3. Petitioner filed her Fair Hearing form with the Division of Hearings and Appeals more than two months later, on May 31, 2014. Exhibit 1.

I note that the Child Care rules provide that new service can be backdated to only the first of the month of application. Manual, §1.3.6.

More significantly, however, petitioner complains that her application was mishandled by the petitioner, and that she should have her March, 2014, eligibility back-dated to August, 2013, when she moved to Milwaukee, Wisconsin. The petitioner provided documentation establishing that a moving company moved her from her New York apartment to Milwaukee between August 19, 2013, and August 25, 2013.

Exhibit 7. A lease was also provided, which was executed on August 15, 2013. The respondent countered that the petitioner did not provide residency verification, and that the pregnancy verification that was provided specifically stated that petitioner resided in New York. See, Exhibit 6. The petitioner credibly testified that she had provided the pregnancy verification from her New York doctor, and that the doctor provided the residency information in error. I concur that it seems reasonable that the doctor's office, in attempting to specifically identify the petitioner, used the address information that it had on file. Petitioner had moved only 2 weeks prior to the issuance of the pregnancy verification letter. Still, the petitioner was informed of the denial in writing and in telephone conversations with respondent's employees. I find that the petitioner was properly informed of her appeal rights and deadlines. See, Exhibits 3 and 5.

While I empathize with petitioner's argument, at this point I have no way of dealing with the September, 2013, denial of petitioner's Child Care application. A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. Petitioner received written notice telling her that her application for Child Care was denied in September, 2013. Petitioner was informed verbally of the denial on March 19, 2014, at which time she requested a Fair Hearing form. She did not file this appeal until after the 45-day deadline specified in the denial notice. While I find that petitioner failed to timely appeal the September, 2013, written notice, I further note that the appeal was filed more than 45 days following the petitioner's telephone conversation with the respondent in March of 2014. I must conclude, therefore, that the Division of Hearings and Appeals does not have jurisdiction to address whether the September 12, 2013, denial of Child Care benefits.

### CONCLUSIONS OF LAW

Petitioner's appeal of the respondent's denial of petitioner's application for Child Care benefits was untimely.

**NOW, THEREFORE, it is ORDERED**

That 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 22nd day of October, 2014.

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 22, 2014.

Milwaukee Enrollment Services  
Child Care Benefits