



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

AAP/158493

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2014, under Wis. Admin. Code §DCF 50.065, to review a decision by the Adoption Assistance in regard to Adoption Assistance Program, a hearing was held on August 13, 2014, at Racine, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly discontinued adoption assistance to the Petitioner.

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: Dale W. Langer, Adoption and Consultation Section

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner is the adoptive parent of █████. █████ is 19 years of age. █████ is in high school and is expected to continue in high school until age 21.
3. On October 22, 2012, the Petitioner signed an Adoption Assistance Agreement with the Department of Children and Families.

4. On January 23, 2013, the agency issued a Notice of Decision on Adoption Assistance Eligibility Status to the Petitioner. It informed the Petitioner that adoption assistance for [REDACTED] would end the month of his 19th birthday and informed her that the last payment would be in April 2014. It further informed her that, in order for adoption assistance to continue, [REDACTED] must meet additional eligibility criteria as listed in an attached letter. The notice further informed the Petitioner that if she disagreed with the determination, she must file an appeal with the Division of Hearings and Appeals within 45 days of the date of the Notice.
5. On December 12, 2013, the agency mailed a Request for Continuation of Adoption Assistance for a Child Over Age 19 to the Petitioner. The Petitioner did not complete or return the form to the agency.
6. On March 31, 2014, the agency issued a second Notice of Decision on Adoption Assistance Eligibility Status to the Petitioner. It again informed the Petitioner that adoption assistance for [REDACTED] would end the month of his 19th birthday and informed her that the last payment would be in April 2014. It further informed her that, in order for adoption assistance to continue, [REDACTED] must meet additional eligibility criteria. The notice further informed the Petitioner that if she disagreed with the determination, she must file an appeal with the Division of Hearings and Appeals within 45 days of the date of the Notice.
7. On June 20, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning adoption assistance must be filed within 45 days of the date of the action. Wis. Admin. Code, §HA 3.05(3) and §DCF 50.065(1). The petitioner's appeal was filed 81 days after the date of the notice. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note, as dicta, that the Petitioner testified that she is attempting to obtain the information necessary to demonstrate that [REDACTED] meets the criteria for continued adoption assistance. This decision does not preclude the Petitioner from submitting another request to the agency if she is able to obtain such information.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

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 Milwaukee,
Wisconsin, this 16th day of October, 2014

\sDebra Bursinger
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 October 16, 2014.

Adoption Assistance
Attorney Nancy Wettersten