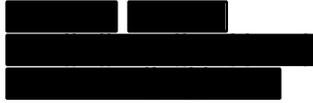




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/158839

PRELIMINARY RECITALS

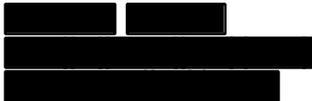
Pursuant to a petition filed July 03, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal 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: Glenetta Rucker

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
1. Petitioner was informed of a child care program overpayment by notice from the Department dated January 17, 2013. The notice stated that an appeal would need to be filed within 45 days.

2. Petitioner filed a request for hearing with DHA on February 11, 2014. Hearing was scheduled for 3/19/14. Petitioner arrived late for the hearing. The hearing was rescheduled to April 23, 2014.
3. Petitioner did not appear for the April 23, 2014 hearing. The matter (#155507) was dismissed. A dismissal order was issued on April 24, 2014 informing petitioner of rehearing rights.
4. Petitioner filed a new request for hearing on July 7, 2014 which is this instant case.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g).

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the parent was not in an approved activity. Child Day Care Manual, Chapter 2, §2.3.1.

An appeal of a negative decision concerning child care must be filed within 45 days of the negative decision. Wis. Adm. Code, §HA 3.05(3). Petitioner was informed about the time limit in the January 17 2013 notice letter.

I must conclude that petitioner's appeal of the overpayment was untimely. Petitioner initially filed an appeal on this overpayment in early 2014 and did not appear for the scheduled hearing. A dismissal order was issued and petitioner did not timely file a request for rehearing or a petitioner for review to the circuit court. Petitioner has now filed a new request for hearing to DHA relating to the notice dated January 17, 2013 which is more than a year ago. She did not appeal within 45 days. Therefore the agency may seek recovery of the entire amount cited in the overpayment notice.

CONCLUSIONS OF LAW

Petitioner's appeal of a child care overpayment was untimely.

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 10th day of September, 2014

\sJohn P. Tedesco
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 10, 2014.

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