



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

CCO/161189

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 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 October 30, 2014, at Milwaukee, Wisconsin. The record was held open for 10 days to allow the respondent to submit additional information regarding any collections received from the Child Care provider. The respondent timely submitted said information.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted name

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.

2. On May 21, 2014, the respondent sent petitioner notice informing her that she was overpaid \$1,991.04 in child care funds during the period of October 6, 2013, to November 30, 2013, claim no. Redact. The notices informed petitioner that she could appeal, but an appeal had to be filed within 45 days of the notice.
3. On June 3, 2014, respondent sent petitioner a Repayment Agreement, which again identified the overpayment. On July 2, 2014, August 4, 2014, and September 3, 2014, the respondent sent dunning notices to the petitioner in an attempt to collect the outstanding balance.
4. All notices were sent to the petitioner's address, as confirmed by the petitioner at hearing.
5. On October 10, 2014, an appeal of the overpayment determination was filed by mail with the Division of Hearings and Appeals, 142 days after the initial notice was sent to petitioner.

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. Admin. 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. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

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. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1). The county determined that petitioner was overpaid child care because during the overpayment period she was in CMD (case management denial) placement due to exhausting her child care hours.

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 May 21, 2014, notice letter.

I acknowledge that I did not question the timeliness of the appeal during the hearing. However, I reviewed the file and I cannot find that the appeal was timely. The notice was sent May 21, 2014, and there is no suggestion that petitioner did not receive them. An appeal is considered filed when received by the Division of Hearings and Appeals or, if there is a postmark, the date of the postmark. Wis. Adm. Code, §HA 3.05(3)(c). Petitioner's postmark dated the filing of the appeal on October 10, 2014.

An Administrative Law Judge can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care benefits must be filed within 45 days of the effective date of the negative action, WI Stat § 49.152(1), WI Admin Code §HA 3.05(3).

I must conclude that petitioner's appeal of the overpayment was untimely. She did not appeal within 45 days of May 21, 2014. 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 27th day of January, 2015

\sPeter McCombs
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 January 27, 2015.

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