



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/161645

PRELIMINARY RECITALS

Pursuant to a petition filed November 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 November 20, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal was 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: Shawnte Julian, Child Care Subsidy Specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On September 12, 2014, the Department of Children and Families (DCF) sent the Petitioner a manual overpayment notice, indicating that she had been overpaid \$4,409.23 in childcare benefits

for the period of October 6, 2013, to January 31, 2014, due to a failure to report a change in income. (Exhibit 2, pgs. 10-11)

3. On September 16, 2014, Milwaukee Enrollment Services (MILES) sent the Petitioner an automated notice, claim number [REDACTED], indicating she was overpaid childcare benefits for the period of October 6, 2013 to January 31, 2014, in the amount of \$4,409.23. (Exhibit 2, pgs. 12-13)
4. Neither agency received any returned mail. (Testimony of Ms. Julien)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 3, 2014. (Exhibit 1)

DISCUSSION

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.

An appeal of a negative action by DCF, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wis. Stats. §49.152(1), Wis. Admin Code §HA 3.05(3) A negative action can be the denial of an application, a reduction in benefits, or as in this case, the recovery of an overpayment.

In the case at hand, the date of negative action was September 16, 2014, the date of the most recent overpayment notice. Because the Petitioner's appeal was filed on November 3, 2014, 48 days after the date of negative action, the Petitioner's appeal is untimely and there is no jurisdiction to review the merits of her appeal.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is 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

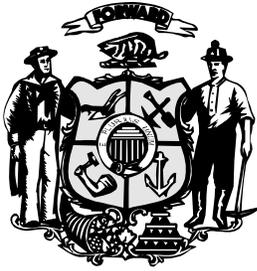
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

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 Milwaukee,
Wisconsin, this 9th day of February, 2015.

\sMayumi M. Ishii
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 February 9, 2015.

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