



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/162924

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a telephonic hearing was held on February 10, 2015.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kathy Jones, ESS
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. She applied for child care benefits on August 25, 2014.
2. On September 8, 2014, the county agency sent a written notice of negative action to the petitioner.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on December 23, 2014.
4. The negative action in this case was the denial of her application for child care benefits.

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 the Department, 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. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of Child Care Benefits. Because the petitioner's appeal was filed 106 days after the county agency's negative action concerning Child Care Benefits, it is untimely.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

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 1st day of April, 2015

\sKelly Cochrane
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 April 1, 2015.

Waukesha County Health and Human Services
Child Care Benefits