



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCB/165048

PRELIMINARY RECITALS

Pursuant to a petition filed March 30, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Kenosha County Human Service Department (the agency) in regard to Child Care, a hearing was held on May 12, 2015, at Kenosha, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed and if so, whether the agency correctly denied the Petitioner's request for child care benefits for the period of December 6, 2014 through February 6, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.
2. On September 22, 2014, the agency sent the Petitioner a notice to remind her to complete a Six Month Report Form (SMRF). (Exhibit 3)
3. On October 20, 2014, the agency sent the Petitioner the SMRF and instructed the Petitioner to complete and return the SMRF by November 5, 2014. (Exhibit 4)

4. On November 18, 2015, the agency sent the Petitioner a notice, advising her that her child care eligibility would be ending effective November 30, 2014, because she did not complete the SMRF. (Exhibit 5)
5. On December 1, 2014, the agency sent the Petitioner a notice advising her that her child care authorization was ending effective December 6, 2014. (Exhibit 6)
6. On or about January 20, 2015, the Petitioner completed an on-line ACCESS application for child care benefits. (Exhibit 13)
7. On January 28, 2015, the agency sent the Petitioner a notice of proof needed, requesting verification of her residence and verification of her employment by February 5, 2015. (Exhibit 7)
8. On February 6, 2015, the agency sent the Petitioner a notice indicating that her January application for childcare benefits was denied because she did not provide the requested verification. (Exhibit 8)
9. On February 12, 2015, the Petitioner provided copies of her paystubs, which showed her income, but not the number of hours she typically works. (Exhibit 9)
10. On February 14, 2015, the agency sent the Petitioner a manual request for verification of the number of hours that she works per pay period. The Petitioner signed the request, stating that she understood what information was needed by the agency. (Exhibit 10)
11. On March 9, 2015, the Petitioner submitted an Employer Verification of Earnings Form, indicating that she is salaried and works 40 hours per week. (Exhibit 11)
12. On March 26, 2015, the agency sent the Petitioner a notice indicating that her application for benefits was denied because she was over the program limit. (Exhibit 12)
13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 30, 2015. (Exhibit 1)

### DISCUSSION

The Petitioner filed an appeal because she seeks child care benefits for the period of December 6, 2013 through February 6, 2015. (See Exhibit 1)

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.

With regard to Petitioner's eligibility ending on November 30, 2014 and her authorization ending effective December 6, 2014, Petitioner's appeal needed to be filed on January 15, 2015 and/or January 20, 2015, respectively. Petitioner did not file her appeal until March 30, 2015, well outside the 45-day appeal period. Consequently, her appeal is untimely and there is no jurisdiction to review the closure of her case, effective November 30, 2014, nor the ending of her authorization effective December 6, 2014.

Petitioner seems to argue that her most recent application for benefits should be backdated to December 2014. However, that would be the January application, the denial of which is outside the jurisdiction of the Division of Hearings and Appeals, because the Petitioner's appeal is untimely.

Even if Petitioner's submission of the EVFE in March 2015, could be considered a new application, Petitioner's request to backdate benefits to December 2014 through February 2015 could not be granted.

"Eligibility may be backdated only to the first of the month of the application filing date, unless the applicant requested an intake appointment and was given an appointment for the following month; in this situation, eligibility may be backdated to the first of the month that the agency received a signed request for child care

assistance...” *CCM §1.3.6* The filing date of the application is the date the agency receives the signed application. *CCM §1.3.1*

As such, even if I accepted Petitioner’s submission of the EVFE in March 2015 as a new application, her benefits could only be backdated to March 1, 2015. At the hearing, the Petitioner indicated that she was no longer using childcare and so, did not need benefits for March 1, 2015 going forward. She only wanted benefits for December 6, 2014 through February 6, 2015.

### 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, Room G200, 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 8th day of July, 2015

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 8, 2015.

Kenosha County Human Service Department  
Child Care Benefits