



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/167279

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Ozaukee County Department of Social Services in regard to Child Care, a hearing was held on October 01, 2015, via telephone.

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]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karen Niemuth

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner filed this appeal to contest the discontinuance of her child care. Her appeal states that she is seeking backdated benefits for the months of February 1 to April 28, 2015.
3. Petitioner's child care case was subject to review in early 2015. That review was not completed as the agency did not receive requested wage verification and the closed the case.

4. Petitioner was sent a notice dated February 23, 2015 that informed her that she was only authorized for child care through February 28, 2015. A second notice, dated April 13, 2015, informed Petitioner that her child care had ended as of April 1, 2015. The first note an appeal deadline of April 9, 2015 and the second an appeal deadline of May 28, 2015.
5. This appeal was filed on July 15, 2015.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §2.5.0.; also see *Wis. Adm. Code*, § HA 3.04(3).

This appeal was filed more than 6 weeks after the deadline noted in the last notice sent to Petitioner informing her that her child care case closed. Petitioner was not reading her notices and had the agency switch to email but she does not regularly check her email. This appeal is untimely as to that case closure and the Division of Hearings and Appeals without authority to act as to the discontinuance of her child care. It is worth noting that the agency had asked Petitioner for 30 days of paystubs but Petitioner would only submit the 1st paycheck of the month not the second check and it was the second check that had commissions.

CONCLUSIONS OF LAW

That this appeal is untimely as to child care benefits for the period noted in Petitioner's appeal – February 1 to April 28, 2015.

THEREFORE, it is

ORDERED

That this appeal 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 25th day of November, 2015

\sDavid D. Fleming
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 25, 2015.

Ozaukee County Department of Social Services
Child Care Benefits