



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 5, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Portage County Department of Human Services ["County"] in regard to Child Care ["CC"], a Hearing was held via telephone on October 13, 2015.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction in this matter.

There appeared at that time via telephone 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: [REDACTED] ES Case Worker
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County, Wisconsin.

2. Petitioner received a written letter notice dated April 13, 2015 and entitled *Notice of Eligibility Child Care* informing her that her CC was denied beginning April 1, 2015 and also informing of her appeal rights including the time limit for requesting Hearing.
3. Petitioner requested a Hearing by a *Request For Fair Hearing* form dated August 3, 2015 and received by DHA on August 7, 2015 via U.S. Mail in an envelope postmarked August 5, 2015.

DISCUSSION

There is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning CC is untimely if it is not filed within 45 days of the effective date of the adverse action being appealed. Wis. Admin. Code § HA 3.05(3) (February 2013); See, DHA Case No. [REDACTED] (Wis. Div. Hearings & Appeals Proposed Decision August 10, 2004; Final Decision September 22, 2004) (DWD); and, DHA Case [REDACTED] (Wis. Div. Hearings & Appeals Proposed Decision September 9, 2004; Final Decision December 30, 2004) (DWD). A Hearing request that is not filed within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is the denial of CC. Petitioner was notified of this by a written letter notice dated April 13, 2015.¹ However, she did not request a Hearing until August 2015. This is well outside of the allowed 45 day time period. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter because petitioner's request for a Hearing was not filed in a timely manner.

NOW, 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

¹ Petitioner acknowledges that "my worker mailed me paperwork which ended my benefits [sic]."

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 Madison,
Wisconsin, this 19th day of October, 2015

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

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The preceding decision was sent to the following parties on October 19, 2015.

Portage County Department of Human Services
Child Care Benefits