



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/172476

PRELIMINARY RECITALS

Pursuant to a petition filed March 4, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration [“MECA”] in regard to the docketing of a warrant for collection of a delinquent Child Care [“CC”] public assistance debt, a Hearing was held via telephone from Madison, Wisconsin on April 12, 2016.

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]
[REDACTED]

Represented by:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

BY: [REDACTED], Attorney
Department of Children And Families
Office of Legal Counsel
Room G200
201 East Washington Avenue
P.O. Box 8916
Madison, Wisconsin
53708-8916

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner received a written letter notice dated January 16, 2016 and entitled *Notice of Warrant Docketed in Milwaukee County Pursuant to Section 49.195(3m) Wisconsin State Statutes* informing her that: "A warrant has been docketed for the collection of a delinquent AFDC, Child Care, Child Care Provider and/or Wisconsin Works (W-2) debt that you have been previously notified of." That January 16, 2016 letter notice stated that the amount due was \$4,317.88 and also informed petitioner of her Hearing appeal rights, including the 20-day limit for requesting a Hearing appeal.¹
3. Petitioner requested a Hearing by a handwritten letter dated February 6, 2016 received by DHA on March 4, 2016 via fax.

DISCUSSION

DHA may Hear the merits of a matter only if it has the legal authority to do so. This is called *jurisdiction*. There is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning the docketing of a warrant is untimely if it is not filed within 20 days from the date on the notice. Wis. Admin. Code § DCF 101.23(9)(a)5. (October 2015) and Wis. Admin. Code § DCF 201.04(5)(eh)1.e. (March 2016); See also, Wis. Stat. § 49.195(3m) (2013-14). A Hearing request is considered filed on the date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (September 2001). A Hearing request that is not filed within the 20-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the notice was dated January 16, 2016. Petitioner did not request a Hearing until March 4, 2016. This is outside of the allowed 20-day time period. Therefore, petitioner's Hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not ask for a Hearing sooner because she was sickly in the hospital. This is unfortunate, but it does not create jurisdiction where none otherwise exists. She also testified that her letter was dated February 6, 2016 and she mailed it right away. However, her request for a Hearing is still not timely even if February 6, 2016 is used as the filing date (the last day with 20 days of January 16, 2016 is February 5, 2016). Finally, she testified that "I was late maybe 1 or 2 days . . . "

It is noted that, even if petitioner's request for a Hearing had been filed in a timely manner, a Hearing concerning the docketing of a warrant is limited to questions of prior payment of the debt that DCF is proceeding against and mistaken identity of the debtor. Wis. Admin. Code § DCF 101.23(9)(a)5. (October 2015) and Wis. Admin. Code § DCF 201.04(5)(eh)1.e. (March 2016); See also, Wis. Stat. § 49.195(3m) (2013-14). It is also noted that petitioner previously requested, and was granted, a Hearing

¹ The January 16, 2016 letter notice concerned the following delinquent CC debt: Claim Number: 4900382694; Overpayment period: April 14, 2013 to October 31, 2013; \$4,341.88. See, DHA Case No. CCO/154632 (Wis. Div. Hearings & Appeals May 9, 2014) (DCF).

concerning the merits of the overpayment underlying the warrant. That Hearing request, like this one, was dismissed due to lack of jurisdiction because petitioner did not file her request for a Hearing in a timely manner. DHA Case No. CCO/154632 (Wis. Div. Hearings & Appeals May 9, 2014) (DCF).

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 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 13th day of May, 2016

\sSean P. Maloney
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 May 13, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit

