



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION

CTI/169554

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 22, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 17, 2015, at Milwaukee, Wisconsin. On January 22, 2016, the Division of Hearings and Appeals issued a decision and order remanding the matter to the agency to rescind the tax intercept. On February 4, 2016, the agency contacted DHA regarding a material error of law in the order.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

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: Keisha Love

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 27 and 28, 2014, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner at her last-reported address on [REDACTED], Milwaukee informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,015.25 for the period of September 1, 2013 – November 30, 2013. The notice also informed the Petitioner of the right to appeal by filing a request for a hearing within 45 days of the date of the notice.
3. On July 2, 2014, August 4, 2014 and September 3, 2014, the agency issued dunning notices to the Petitioner at her last-reported address on [REDACTED], Milwaukee.
4. On June 10, 2015, the agency issued Child Care Client Overpayment Notices and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,152.31 for the period of June 15, 2014 – November 30, 2014. The matter is designated as Claim # [REDACTED]. The notice also informed the Petitioner of the right to appeal by filing a request for a hearing within 45 days of the date of the notice.
5. On September 11, 2015, the agency issued a notice of state tax intercept to the Petitioner at her address on 63rd St., Milwaukee.
6. On October 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by an agency concerning recovery of child care benefits must be filed within 45 days of the date of the action. Wisconsin Shares Child Care Manual, Section 3.5.3. An appeal of a tax intercept action be filed within 30 days of the date of the notice. Wis. Stats., § 49.195.

In this case, the Petitioner testified that she did receive the notices at her address on [REDACTED], Milwaukee. She conceded she did not pay attention to the appeal deadline. I conclude that the Petitioner's appeal is not timely as to the merits of the overpayment action.

With regard to the tax intercept action, the Petitioner's appeal is timely.

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or childcare payments made incorrectly.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.  
(emphasis added)

The Wisconsin Shares Child Care Manual Section 3.7.2 requires the Department to issue three dunning notices to an individual with an overpayment prior to taking action to collect via tax intercept. That provision of the Manual also states as follows:

If a client is delinquent on a current overpayment and he/she receives another overpayment, the second overpayment is automatically considered delinquent, without the client receiving an additional three (3) dunning notices.

In this case, the Petitioner received three dunning notices as noted in Finding of Fact #3 above. Those notices related to the overpayment action taken by the agency in 2014 (see Finding of Fact #4). The Petitioner appealed the overpayment action and a related levy issuance at the same time as the appeal in this tax intercept matter. The appeal related to the overpayment and levy issuance is designated as DHA Case No. 169174. The Petitioner's appeal in that matter was found to be untimely. Therefore, the agency actions regarding collection of the overpayment, including the issuance of the dunning notices, was authorized. The Petitioner is considered delinquent in that overpayment action.

Pursuant to the above-cited section of the Manual, the agency is not required to issue additional dunning notices for a second overpayment. Because the Petitioner is delinquent on the 2014 overpayment action, the 2015 overpayment action that is the subject of this appeal is automatically considered delinquent and the agency is authorized to commence collection actions, including a tax intercept.

### CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely as to the overpayment action.
2. The Petitioner's appeal is timely as to the tax intercept action.
3. The Department was authorized to issue a tax intercept to the Petitioner.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's 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

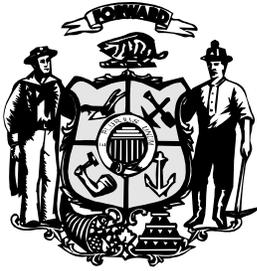
those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

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 16th day of February, 2016

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\sDebra Bursinger  
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 February 16, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit