



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/171053

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Kenosha County Human Service Department in regard to Other, a hearing was held on February 04, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner’s appeal is timely.

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: 
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Kenosha County.
2. On October 3, 2013 the agency sent the petitioner a notice of overpayment stating that she had been overpaid \$2,132 in child care benefits for the period from April 21, 2013 to July 31, 2013.
3. The agency sent the petitioner a series of “dunning notices” reminding her of this debt.

4. The petitioner did not make any payments on this debt.
5. On November 2, 2015 the agency sent the petitioner a notice stating that it would be imposing a levy on her wages to recover the overpayment.
6. On December 30, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance benefits, a county, tribal governing body, W-2 agency, or the department may recover an overpayment through the use of a levy under Wis. Stat., §49.195 (3N). Wis. Adm. Code, §DCF 101.23(10)(b) provides as follows: "1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt." Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a levy, i.e., whether the department is proceeding against the correct individual and whether there have been prior payments of the debt, the appeal must be timely.

The Wisconsin Administrative Code, at *Wis. Admin. Code, § DCF 101.23 (10) (c)*, states that:

...

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

...

Wis. Admin. Code, §DCF 101.23(10)(c).

In this case the agency sent the petitioner on November 22, 2015. In the petitioner's Request for Fair Hearing she writes, "I am requesting a hearing and I realize it is just past the 20 days since receiving the notice." She then goes on to state the reason her Request was submitted untimely. Because her request is untimely, I have no choice, but to dismiss the petitioner's appeal. I note that at the hearing, the petitioner sought to challenge the underlying overpayment. Even if her request to appeal the levy was timely, she could not have challenged the underlying overpayment. Her time limit to challenge that expired in 2013.

CONCLUSIONS OF LAW

The petitioner's 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 12th day of February, 2016

\sCorinne Balter
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 February 12, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit