



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION ON REHEARING

WTI/171356

PRELIMINARY RECITALS

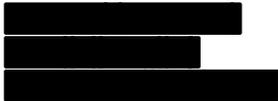
Pursuant to a petition filed January 11, 2016, under Wis. Stat. § 49.85(4), to review a decision by the Department of Children and Families (Department), by the Public Assistance Collections Unit (PACU) and its agents, to intercept the petitioner's income tax refund and apply it against a prior overpayment of Wisconsin Works (W-2) benefits, a telephone hearing was held on March 22, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly certified a W-2 public assistance debt of record for state tax refund intercept.

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: [Redacted] QA Analyst
Forward Service Corporation
4600 American Parkway
Suite 301
Madison, WI 53718

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On July 30, 2015 the W-2 agency issued a notice of decision to petitioner at her address of record stating there was an overpayment of W-2 for the period of 1/24/14-10/31/14 in the amount of \$2237. This notice also advised that she could request a fact finding review of that determination within 45 days of the decision date. Exhibit 1.
3. On August 4, 2015 the W-2 agency issued a Repayment Agreement to the petitioner at her address of record.
4. On September 2, 2015 the W-2 agency issued a dunning notice to petitioner at her address of record.
5. On October 2, 2015 the W-2 agency issued a second dunning notice to petitioner at her address of record.
6. On November 3, 2015 the W-2 agency issued a third dunning notice to petitioner at her address of record.
7. The petitioner did not request a fact finding review in this matter.
8. On December 11, 2015 the PACU issued a notice to petitioner at her address of record stating that it intended to certify her state tax refund for interception in the amount of \$2237 for claim # [REDACTED]. That notice properly stated her appeal rights. Exhibit 4.

### DISCUSSION

The State must recover all overpayments of public assistance benefits. *See*, 45 C.F.R. § 233.20(a)(13)(I): “Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible.... The State must take all reasonable steps necessary to promptly correct any overpayment.” *See also*, Wis. Stats. §§ 49.125(1), 49.195(3). Further, at least annually, if a Wisconsin Works agency determines that the Department of Children and Families (DCF) may recover an amount under §§49.161 or 49.195(3), or collect an amount under §49.147(6)(cm), the Wisconsin Works agency shall notify the DCF of the determination. Wis. Stat. §49.85(1). DCF must notify recipients both that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refunds and that the recipients may appeal the decision by requesting a hearing. Wis. Stat. § 49.85(3)(b).

The hearing right for an attempted tax intercept is limited by Wis. Stat. §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department of children and families shall hold a contested case hearing under s. 227.44, except that the department of children and families 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.

The Department notified the petitioner on December 11, 2015, that it intended to certify her state tax refund for interception. That notice properly stated her appeal rights. She had also been previously notified of the overpayment. See Finding of Fact 2. The overpayment notice properly stated her right to appeal under W-2 rules to first request a fact finding within 45 days of the notices, and then to request a Departmental Review with the Division of Hearings and Appeals. See DCF §101.23(2)(d), Wis. Adm. Code. She did not do so. The petitioner contends that she did not receive the overpayment notice because, despite it being mailed to her address of record at her grandmother’s house, her grandmother did not tell her she had mail. I find this excuse inadequate and highly convenient. The problem is that she is the person responsible for providing her address of record to the agency, which she did, and on which the agency relied and mailed her notices. If she could not receive her own mail at her mailing address of record the fault lies with her for using that address.

As she had a prior opportunity for a hearing on the merits of the overpayment, she does not now have a hearing right to question the merits of the overpayment itself. The only issues remaining in this interception hearing are whether the amount to be intercepted differs from the overpayment amount, or whether the petitioner has not been credited with amounts already paid on the overpayment. The record does not show any payments made by petitioner, and the notice of overpayment does not differ from the amount sought to be intercepted. Accordingly, the Department may utilize tax refund interception as a means of recovering the W-2 overpayment from the petitioner's state tax refund or credit pursuant to Wis. Stats., §49.85.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### CONCLUSIONS OF LAW

- 1) The Department has correctly certified W-2 overissuance Claim # [REDACTED] for state income tax refund intercept, and it may proceed with the action to intercept the petitioner's state income tax refund.
- 2) That the petitioner has had a prior opportunity to be heard on the underlying W-2 overissuance, Claim # [REDACTED]; she failed to correctly exercise her opportunity to do as she did not file a fact finding review request with the W-2 Agency; and this issue is excluded from review in the instant appeal.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein is dismissed.

### **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 23rd day of March, 2016

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\sKelly Cochrane  
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 March 23, 2016.

Wisconsin Works (W-2)  
Public Assistance Collection Unit