



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: LVO - 171573

PRELIMINARY RECITALS

On January 22, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § DCF 201.07(1)(e), to challenge a decision by the Wisconsin Works (W-2) regarding W2. A hearing was held on March 3, 2016. At that time, the agency presented its evidence and the Petitioner also presented testimony. The Petitioner requested during the course of the hearing that the matter be adjourned so that he could obtain legal representation. The Petitioner's request to adjourn was granted. On April 11, 2016, the DHA received a Notice of Appearance by [redacted]. A second hearing was scheduled for April 14, 2016 but rescheduled at the request of the Petitioner's attorney. A second hearing was scheduled for June 7, 2016. On June 7, 2016, the Petitioner's attorney advised DHA that she withdrew her representation due to losing contact with the Petitioner. Petitioner did not appear for the second hearing and no additional evidence was taken. The record was closed on June 7, 2016.

The issue for determination is whether the agency properly issued a levy against the Petitioner for an unpaid public assistance debt.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI53703

By: [redacted]
Wisconsin Works (W-2)
Milwaukee, WI

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On or about November 13, 2006, the agency issued a W-2 Overpayment Recoupment Notice to the Petitioner and [REDACTED] at an address on [REDACTED], Kenosha, informing them that the agency intends to recover an overpayment of W-2 benefits in the amount of \$1,429 for the period of August 9, 20014 – October 12, 2004 due to failure to report accurate household composition. The notice advised him of the right to request a W-2 fact finding by requesting a review within 15 days of the date of the notice.
3. On December 4, 2006, January 3, 2007 and February 2, 2007, the agency issued dunning notices to the Petitioner at the address on [REDACTED], Kenosha.
4. On December 3, 2015, the agency issued a Notice Prior to Levy – Payment Demand to the Petitioner at an address on [REDACTED], Kenosha informing him that his debt for overissuance of public assistance benefits is delinquent.
5. The agency has collected payments from the other liable party [REDACTED] in the amount of \$538.30.
6. On January 13, 2016, the agency issued a levy against the Petitioner.
7. On January 22, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Petitioner seeks to contest the levy issued as part of the agency's attempt to collect a claim for a W-2 overpayment from 2006. The present case is filed under Wis. Stat. §49.195(3s), which allows a debtor to appeal the issuance of the warrant, but limits the appeal "to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." See Wis. Admin. Code §DCF 101.23(9)(a)5. The agency is allowed to apply funds obtained via levy, lien or tax intercept against the expenses incurred in filing and serving the levy. Id. (a)3.

At the hearing on March 3, 2016, the Petitioner disputed that he is a liable party to the overpayment in this matter. When asked why he had not filed an earlier appeal, the Petitioner testified that he has contested every notice that he received. He also testified that he did not receive all of the notices. He did recall receiving several notices but couldn't recall specifically which notices he received.

The Petitioner was given an opportunity to obtain legal representation and present additional evidence regarding this matter. He did obtain legal representation but did not maintain contact with his attorney, causing his attorney to withdraw from representation. As a result of this withdrawal and Petitioner's non-appearance at the second hearing, no additional evidence was received from the Petitioner.

Based on the evidence presented, I conclude the agency properly issued a levy against the Petitioner for an outstanding public assistance debt. This appeal is limited to questions of prior payment and mistaken identity of the debtor. The Petitioner presented no evidence to indicate that there was an issue regarding prior payments or that he is not the debtor listed in the matter.

CONCLUSIONS OF LAW

The agency properly issued a levy against the Petitioner for an outstanding public assistance debt.

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, **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 19th day of July, 2016

\s _____
Debra 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 July 19, 2016.

Wisconsin Works (W-2)
Public Assistance Collection Unit