



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/172044

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2016, under Wis. Stat. §§46.85, 227.44, and 49.85(4), and Wis. Admin. Code §§HA 3.03(1),(4), to review a decision by the Department of Children and Families (the agency) to intercept the petitioner's income tax refund and apply it against a prior overpayment of Child Care Benefits (CCB), a telephonic hearing was held on April 07, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly sought to intercept the Petitioner's tax refund to collect an overpayment of CCB.

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

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 17, 2015 the agency issued petitioner a notice of child care overpayment. Exhibit 1.

3. Petitioner appealed the notice of overpayment and a hearing was held on the merits of that case on August 11, 2015. The Decision in that case (CCO/167415) upheld the overpayment on August 24, 2015. See Exhibit 7.
4. On September 2, 2015 the agency issued a repayment agreement to petitioner. Exhibit 2.
5. On October 5, 2015 the agency issued a dunning notice to petitioner. Exhibit 3.
6. On November 3, 2015 the agency issued a dunning notice to petitioner. Exhibit 4.
7. On December 2, 2015 the agency issued a dunning notice to petitioner. Exhibit 5.
8. On January 1, 2016 the agency issued a notice of tax intercept to petitioner. Exhibit 6.

DISCUSSION

Wis. Stat. §49.85(2)(b), provides that the agency 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, overpayment of AFDC and Medical Assistance payments made incorrectly. The agency must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from 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)(b).

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 petitioner has had a prior opportunity for hearing on the merits of the overpayment. That hearing decision affirmed the agency's decision that the petitioner had been overpaid. The petitioner does not get another opportunity to argue the validity of that decision here. The determination by the agency that the Petitioner was overpaid is affirmed and the tax intercept is properly pursued.

CONCLUSIONS OF LAW

1. The Petitioner was overpaid CCB in the amount of \$980.24.
2. The agency may certify the sum of \$980.24 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition for review 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 10th day of June, 2016

\sKelly Cochrane
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 June 10, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit