



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNO/172192

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on April 05, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely as to the overpayment action and, if so, whether the agency properly issued a lien to the Petitioner for an unpaid public assistance debt.

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]
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 August 27, 2012, the agency issued Child Care Overpayment Notifications and worksheets to the Petitioner and [Redacted] (an adult member of Petitioner's household) at her current address on [Redacted]

- , Milwaukee. The notice informed them that the agency intends to recover an overissuance of child care benefits in the amount of \$7,235.56 for the period of August 23, 2009 – February 28, 2010 due to failure to accurately report household members. The notice advised them of a right to appeal by filing a hearing request with the Division of Hearings and Appeals within 45 days. The deadline for filing an appeal was October 11, 2012.
3. On October 2, 2012 and November 2, 2012, dunning notices were issued to the Petitioner at her current address on ■, Milwaukee.
 4. On November 16, 2012, the Division of Hearings and Appeals received a request for hearing from the Petitioner. That case was designated as DHA Case No. CCO/145350.
 5. On January 4, 2013, the Division of Hearings and Appeals issued a Notice of Hearing to the Petitioner at her current address on ■, Milwaukee advising her that a hearing was scheduled for Thursday, January 17, 2013 at 11:00 a.m. It further advised her of the hearing location at the Milwaukee County Department of Human Services, 1220 W. Vliet St., 1st Floor, Room 106, Milwaukee, WI. It also advised that the matter would be dismissed if she did not appear or if she could not be reached at the scheduled date and time. In addition, the notice contained a phone number for the Petitioner to call if she needed to reschedule.
 6. On January 17, 2013, an administrative law judge and a representative from the county agency were available for the Petitioner's hearing. The Petitioner did not appear at the appointed time and place.
 7. On January 22, 2013, a decision was issued to the Petitioner at her current address on ■, Milwaukee by the Division of Hearings and Appeals dismissing the appeal due to the Petitioner's failure to appear for the hearing. The Order advised the Petitioner of the procedure for requesting a re-hearing or appeal to court. The Petitioner did not request a re-hearing.
 8. On February 4, 2013, a third dunning notice was sent to the Petitioner at her current address on ■, Milwaukee.
 9. During the period of July 8, 2013 – February 25, 2016, the agency collected \$4667.49 from the Petitioner and ■ for the overpayment. There is an outstanding balance of \$2,568.07. The most recent collections occurred on February 25, 2016 (\$40) and on February 23, 2016 (\$1,349).
 10. On February 19, 2016, the agency issued a Notice of Warrant Docketed in Milwaukee County to the Petitioner informing her that the agency has docketed a warrant for the collection of a delinquent public assistance debt. It notified her that the amount due is \$3,967.07.

DISCUSSION

An administrative law judge (ALJ) can rule on the merits of a case only if jurisdiction is present under law to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning child care benefits must be filed within 45 days of the effective date of the negative action. Wisconsin Shares Child Care Manual, §3.5.3.

In this case, the Petitioner asserts that she did not receive the hearing notice or decision on the overpayment case. The notice and decision were properly mailed to the Petitioner's address. The agency has been collecting for the overpayment from the Petitioner for more than 3 years. The Petitioner conceded that she was aware of the overpayment and the payments or collections made toward the debt. The Petitioner provided no explanation why she never contacted DHA or the agency for almost 4 years if she felt she had not properly received notice of a hearing on her overpayment appeal. The Petitioner did not assert any issues with her mail delivery. I do not find the Petitioner's testimony credible that she was unaware of the overpayment hearing and decision. Her attempt to appeal the overpayment issue almost 4

years after receiving the overpayment notice is without merit. I find the appeal to be untimely with regard to the overpayment issue.

With regard to the lien, according to Wis. Stat. §49.195(3s) and Wis. Admin. Code § DCF 101.23(9)(a)5, the Petitioner's appeal is limited "to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." 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.

The Petitioner presented no issue of mistaken identity. As to prior payments, the agency presented a listing of the payments collected from ■ and the Petitioner toward the debt. The agency demonstrated that the warrant was issued for an outstanding debt of \$3,967.07. Subsequent to the issuance of the warrant notice, additional payments totaling \$1,389 were collected from the Petitioner. The remaining outstanding balance on the overpayment is \$2,568.07. The Petitioner presented no argument or evidence to demonstrate that this outstanding balance is not accurate. Therefore, I conclude there is no issue related to prior payments of the debt. The agency properly issued a warrant/lien against the Petitioner for an unpaid public assistance debt.

CONCLUSIONS OF LAW

The agency properly issued a warrant against the Petitioner for an unpaid public assistance debt related to a child care overpayment.

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 23rd day of June, 2016

\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 June 23, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit