



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/173206

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regard to Other, a hearing was held on April 19, 2016, at Milwaukee, Wisconsin.

The issues for determination are 1) whether the Division of Hearings and Appeals has jurisdiction to review the overpayment determination and 2) whether the agency correctly implemented a levy.

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], Quality Assurance Manager

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On January 27, 2009, the agent sent the Petitioner an overpayment notice, claim number [Redacted], indicating that she was overpaid \$559.00 in W-2 benefits for the period of December 16, 2007 to January 31, 2008. The notice was sent to an address on [Redacted] (Exhibit 2, pgs. 50-58)

3. On February 3, 2009, the agency sent the Petitioner a repayment agreement. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 59-69)
4. On March 3, 2009, the agency sent the Petitioner a dunning notice, to remind her about the debt. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 70-72)
5. On March 5, 2009, the agency sent the Petitioner a second overpayment notice, claim number [REDACTED] for \$628.00 for the period of October 16, 2008 to November 30, 2008. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 73-80)
6. On April 2, 2009, a repayment agreement was sent to the Petitioner, regarding both claims, to remind the Petitioner about the debt. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 84- 94)
7. Also on April 2, 2009, the agency sent the Petitioner a second dunning notice. This one listed both overpayment claims. This notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 81-83)
8. On May 4, 2009, a second dunning notice was sent to the Petitioner to remind her about the debt. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 95-98)
9. The [REDACTED] address was the Petitioner's mother's residence and Petitioner used the address as her mailing address. (Testimony of the Petitioner)
10. On February 24, 2015, the agency sent the Petitioner a notice that it was recouping \$65.00 from Petitioner's W-2 check and applying it to the \$559 claim. This was sent to the Petitioner at an address on [REDACTED] (Exhibit 2, pgs. 99-102)
11. On March 26, 2015, the agency sent the Petitioner a notice that it was again recouping \$65.00 from her W-2 check and applying it to the \$559 claim. This notice was sent to the Petitioner on [REDACTED] (Exhibit 2, pgs. 103-107)
12. On May 4, 2015, the agency sent the Petitioner another repayment agreement for the \$628 claim and the remaining balance of the \$559 claim. This notice was sent to the Petitioner at an address on [REDACTED] (Exhibit 2, pgs. 108-118)
13. The Petitioner reported the [REDACTED] address as her residence in her applications for FoodShare and Health Care benefits on December 1, 2014 and again on May 21, 2015. The Petitioner confirmed that she lived at that address during the time in question. (Exhibits 2, pgs. 136-149; testimony of Petitioner)
14. On March 3, 2016, the Public Assistance Collections Unit (PACU) sent the Petitioner a Notice Prior to Levy, demanding payment of \$1,070.25. The notice was sent to Petitioner's current address. (Exhibit 1 and Exhibit 2, pg. 151)
15. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 25, 2016. (Exhibit 1)
16. On March 26, 2016, PACU sent the Petitioner a notice of levy, indicating it could seize any of her property to satisfy the overpayment. The notice was sent to the Petitioner's current address. (Exhibit 1 and Exhibit 2, pg. 5)

DISCUSSION

DOES HEARINGS AND APPEALS HAVE JURISIDCTION TO REVIEW THE BASIS OF THE UNDERLYING OVERPAYMENT DETERMINATION?

The Petitioner indicated a desire to dispute the underlying overpayment of W-2 benefits. However, the Division of Hearings and Appeals only conducts a paper review of W-2 overpayment determinations, after a Fact Finding review has been completed by the W-2 agency. *W-2 Manual* §12.3.1

There is no indication in the record that the Petitioner requested a Fact Finding review, and no indication that the W-2 agency ever completed a fact finding review. Consequently, is no jurisdiction for the Division of Hearings and Appeals to review the overpayment determination at this time.

The Petitioner should note that if she wanted to dispute the basis of the underlying overpayment, she needed to file a Fact Finding Review with the W-2 agency within 45 days of the date on the overpayment notices. *W-2 Manual* §12.2.2

DID THE AGENCY CORRECTLY INSTITUTE THE LEVY?

Wis. Stats. §49.195(3) states that agencies must determine when an overpayment in Wisconsin Works (W-2) benefits has occurred and that it must, “promptly recover all overpayments”.

Wis. Stats. §49.195(3n)(b) states:

If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

Wis. Admin. Code §DCF 201.04(5)(ep) 2. a. further discusses the notice required prior to levy:

(ep) Levy under section 49.195 (3n), Stats

...

2. 'Notice prior to levy.'

- a.** If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. [DCF 201.07](#) 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.
- b.** The department shall make the demand for payment and give notice to the debtor at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt....
- c.** The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy.
- d.** Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

3. 'Service of levy and review when property levied.'

- a.** The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.
- b.** 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.

The Wisconsin Shares Child Care Manual §3.7.3 also states the following:

In client collections cases, the local agency that established the overpayment is also responsible for handling the delinquency collections appeal process for levy, warrant/lien and DOR tax intercept.

The documents that are needed for these hearings are:

- Original overpayment notices which include the hearing rights (system generated and manual Child Care (CC) Overpayment Notice ([DCF-F-DWSW11250-E](#)))
- Calculation of the overpayment (Child Care Overpayment Worksheet [DCF-F-452-E](#) or its functional equivalent)
- The decision from any prior hearing
- **Three (3) dunning notices from the benefit recovery (BV) system**
- Signed repayment agreement (RPA), if one exists
- Delinquency collection notice(s) -- notice prior to levy, levy notice, DOR certification notice of tax refunds or credits, and notice of warrant docketed
- Any other supporting documentation that will support the reason for the overpayment

Emphasis added; See also Process Help §31.3.7.2

Here, the agency sent the Petitioner overpayment notices with overpayment worksheets; it sent her three dunning notices; it sent her three repayment agreements; it sent her two notices, advising her it was recouping \$65.00 from her W-2 benefit and the agency sent the Petitioner a notice prior to levy and a levy notice.

The Petitioner testified that she had no recollection of any of this, but was able to confirm that the addresses used by the agency to mail her notices were correct addresses. Where the evidence presented by the agency demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received. See [State ex. Rel. Flores v. State](#), 183 Wis.2d 587, at 612-613 (1994). There is no evidence in the record that the Petitioner did not receive the required notices.

Accordingly, it is found that the agency correctly implemented the levy.

CONCLUSIONS OF LAW

- 1) The Division of Hearings and Appeals has no jurisdiction to review the basis of the underlying overpayment, because there is no indication the Petitioner requested and the W-2 agency completed a Fact Finding Review.
- 2) The agency correctly implemented a levy.

THEREFORE, it is

ORDERED

That the Petitioner 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 28th day of June, 2016

\sMayumi M. Ishii
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 28, 2016.

Wisconsin Works (W-2)
Public Assistance Collection Unit