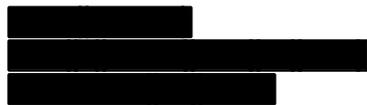




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CTI - 173261

PRELIMINARY RECITALS

On March 30, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to challenge a decision by the Milwaukee Early Care Administration - MECA regarding Child Care. The hearing was held on April 26, 2016, by telephone.

The issue for determination is whether Petitioner's appeal is timely as to both notices of tax intercept issued to collect overissuances of FoodShare benefits as well as the underlying overpayment.

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest September 2010 notices of child care overissuance and February 2011 and May 2015 tax intercept notices.

3. Petitioner was sent a child care overpayment notice dated September 13, 2010 that informed her that she had been overissued child care benefits in the amount of \$1304.10 for the period of March 1, 2009 to August 31, 2009 due to inadvertent household error. Worksheets detailing the overpayment were attached. The notice was sent to Petitioner at an address on [REDACTED] in Milwaukee. A second notice, dated September 14, 2010 was sent to Petitioner at a PO Box in Milwaukee. Both contain appeal instructions.
4. Petitioner was sent a tax intercept notice dated February 11, 2011 that informed Petitioner that her taxes could be intercepted to recover the child care overissuance noted at Finding # 2. That notice was sent to the [REDACTED] address.
5. On April 28, 2015 Petitioner's income tax refund was subject to intercept and \$695.00 was recovered to offset the overpayment involved here. Petitioner was sent a letter dated April 30, 2015 that explained the intercept. That letter was sent to Petitioner at the above address.
6. Petitioner was sent a tax intercept notice dated May 15, 2015 that informed Petitioner that \$625.55 remained to be intercepted to fully recover the overpayment noted at Finding #3. That notice was sent to Petitioner at the above address.
7. Both tax intercept notices contain appeal instructions.
8. An agency case noted dated August 8, 2012 indicates that Petitioner found one of the child care overpayment notices and called the agency. The notes indicate that Petitioner's appeal rights were explained to her.
9. This appeal was filed on March 30, 2016.

### DISCUSSION

The first question is whether Petitioner's appeal is timely with respect to the September 2012 overpayment notices. In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3).*

Here there is no indication that the September 2009 notifications of overissuance were sent to the wrong address. Further, case notes show that Petitioner was aware of the overpayment in August 2012; she had at least one of the overpayment notices at that time. Both overpayment notices contained appeal instructions that informed Petitioner that the time limit for filing an appeal to contest the overissuance was 45 days. No appeal was received by the Division of Hearings and Appeals. Thus this appeal is untimely as to the original notices of overpayment.

As for the tax intercept, *Wisconsin Statute §49.195(3)*, provides that the agency must determine if a childcare overpayment has occurred under §49.155 and that the agency must seek recovery of the overpayment. The Department of Children and Families (DCF) may utilize tax intercept as a means of recovering the overpayment. *Wis. Stat., §49.85*. In fact, the *Statutes at §49.85(2)(b)*, require that the DCF, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of W-2 benefits, including child care.

The Department of Children and Families must notify the person that it intends to certify overpayments to the Department of Revenue for setoff from his/her 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)*. A tax intercept appeal must be filed within 30 days of the notice. *Id., §49.85(3)(a)2*.

Certainly the May 15, 2015 tax intercept notice was sent to Petitioner's current address and her income tax refund was intercepted just prior to that notice. This appeal was filed about 10 months after those events. Thus this appeal is untimely as to the tax intercept.

The Department may utilize tax refund interception as a means of recovering the overpayment. As an aside I also note that the tax intercept amount and the remaining balance are more than the \$1304.10 overpayment because of certified mailing fees.

### **CONCLUSIONS OF LAW**

1. That Petitioner's appeal is untimely as to the September 2009 notices of child care overpayment.
2. That Petitioner's appeal is untimely as to the tax intercept.

**THEREFORE, it is ORDERED**

That this 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 21st day of July, 2016

\s \_\_\_\_\_  
David D. Fleming  
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 21, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit