



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

LVO/142177

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 06, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee County Department of Human Services and the Public Assistance Collection Unit (PACU) of the Department of Children and Families to issue a levy to collect an overpayment of Child Care benefits, a hearing was held on September 20, 2012, at Waukesha, Wisconsin.

Per statute, the issues for determination are whether (1) the PACU gave proper credit for payments against the outstanding debt and/or 2) there is a mistaken identity of the debtor.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Keisha Love

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 9, 2006, Milwaukee County Department of Human Services (the agency) sent petitioner a Child Care Overpayment Notification, claim number [REDACTED], stating that

Petitioner was overpaid Child Care benefits in the amount of \$3,796.00 for the period of 10/23/05 to 1/21/06. The notice was sent to [REDACTED]. Petitioner received the notice. (Exhibit 4, p. 4 ; Petitioner's testimony)

3. On March 2, 2006, the agency sent Petitioner a Repayment Agreement for Wisconsin Works (W-2) or Child Care Overpayment. This was sent to the [REDACTED] (Exhibit 4, pg. 12)
4. Petitioner filed a request for fair hearing by March 2, 2006. However, she failed to appear for the hearing that was scheduled in May 2006, so her appeal was dismissed. (Exhibit 4, pgs. 19 and 20; See also case CCO-75327)
5. During the time in question, Petitioner moved between two addresses as follows:
  - November 2010 to June 2011 – [REDACTED]
  - June 2011 to December 31, 2011 – [REDACTED]
  - January 1, 2012 to present – [REDACTED]

(Petitioner's testimony)
6. On June 2, 2006, the agency sent Petitioner a dunning notice regarding the overpayment. The notice was sent to the [REDACTED] (Exhibit 4, pg. 9)
7. On July 5, 2006, the agency sent Petitioner a second dunning notice regarding the alleged overpayment. This was sent to the [REDACTED] (Exhibit 4, pg. 10)
8. On August 4, 2006, MILES sent Petitioner a third dunning notice regarding the alleged overpayment. This was sent to the [REDACTED] (Exhibit 4, pg. 11)
9. On September 16, 2006, PACU sent Petitioner a notice that the aforementioned overpayment may be intercepted from any tax refunds or credits due Petitioner then or in the future. This notice was sent to Petitioner at the [REDACTED] (Exhibit 4, pg. 15)
10. On June 22, 2012, PACU sent Petitioner a notice that it issued a levy upon Petitioner's property to collect an overpayment of child care benefits in the amount of \$3,832.00. This notice was sent to Petitioner at her current address, [REDACTED] (Exhibit 4, pg. 6)
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 6, 2012. (Exhibit 1)

### DISCUSSION

Wisconsin Stat. §49.195(3s), limits the issues in an appeal of a levy action to, "questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." *See also* Wis. Admin. Code §DCF 101.23(9)(a)(5).

At the hearing Petitioner wanted to contest liability for overpayment claim, asserting that her daycare provider stole her personal information and filed for child care benefits. Petitioner's claim of identity theft is self-serving and unsupported by the record. Petitioner did not file a police report, nor did she show up for the fair hearing in May 2006 that was specifically scheduled to address the overpayment issue. There is no indication that Petitioner filed a complaint with daycare fraud investigators at DCF. Consequently, it is found that PACU is proceeding against the correct debtor.

It should be noted that Petitioner claimed that she did not get the hearing notice for the May 2006 hearing. Petitioner also claims that she did not get the subsequent repayment request or dunning notices because she became homeless during the fall of 2006. Petitioner's claim that she was homeless is also self-serving and unsupported by the record. Further, the repayment request and dunning notices were mailed to

Petitioner at the same address at which she received the initial overpayment notice and they were mailed during the late spring and summer of 2006, before Petitioner states she became homeless. As such, Petitioner should have received the notices. Further, 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 basis in the record to find that Petitioner did not get the hearing notice, repayment agreement and dunning notices.

Petitioner also asserts that the amount of the stated debt is incorrect, because her taxes have been intercepted to satisfy the debt and because her wages have been garnished to satisfy the debt. However, Petitioner did not provide any documentation to show that the alleged payments have been made to satisfy the debt. Further, her claim that her taxes have been intercepted is dubious, given that she testified that for at least a portion of the last six years, she has not been working. In addition, during the six years since the notice of tax interception was mailed to Petitioner, she has done nothing about the matter. One would think that if Petitioner's tax returns had been intercepted and her wages garnished that she would have filed a request for fair hearing at some point during those six years.

### **CONCLUSIONS OF LAW**

Petitioner has not established a case of mistaken identity, nor has she shown that the agency failed to credit payments that she has made toward the debt.

**THEREFORE, it is ORDERED**

That the appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East

Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of October, 2012.

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU @wisconsin.gov - DWSPACU@wisconsin.gov  
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The preceding decision was sent to the following parties on October 8, 2012.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit