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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

ATI/143541

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 31, 2012, under Wis. Stat. § 49.85(4), to review a decision by the Milwaukee County Department of Human Services in regard to an Aid to Families with Dependent Children benefits overpayment tax intercept, a hearing was held on November 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely as a matter of law.

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: Mary Hartung

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was overpaid \$7,465.00 in Aid to Families with Dependent Children (AFDC) benefits by the Department during the period of August 1, 1991 to January 31, 1993.

2. On October 9, 1995, the county agency issued an "Important Notice About Your State Tax Refund and Credits to the petitioner at [REDACTED]. This notice included information advising petitioner to file an appeal within 30 days of the date of the notice.
3. On October 22, 1996, the county agency issued a n "Important Notice About Your State Tax Refund and Credits to the petitioner at [REDACTED]. This notice included information advising petitioner to file an appeal within 30 days of the date of the notice.
4. On August 4, 1997, respondent wrote to petitioner demanding repayment, and advising her that failure to pay the debt could result in collection actions including referral to federal or state sax offset. This correspondence was sent to petitioner at [REDACTED].
5. In September, October, and November of 1997, the respondent sent petitioner further monthly collection reminders. These three notices were sent to petitioner at [REDACTED].
6. On April 26, 2000, respondent notified petitioner that it had received \$700.00 from petitioner's State Income Tax refund, and applied that to the balance outstanding on her overpayment claim. The notice advised petitioner to contact the Office of Public Assistance Collection Unit with any questions, and was mailed to petitioner at [REDACTED].
7. On December 26, 2006, respondent issued a n "Important Notice About Your State Tax Refund and Credits to the petitioner at [REDACTED]. This notice included information advising petitioner to file an appeal within 30 days of the date of the notice.
8. On March 1, 2012, respondent notified petitioner that it had received \$592.58 from petitioner's State Income Tax refund, and applied that to the balance outstanding on her overpayment claim. The notice advised petitioner to contact the Office of Public Assistance Collection Unit with any questions, and was mailed to petitioner at [REDACTED].
9. Petitioner filed the instant appeal on August 31, 2012, contesting the tax intercept imposed against her.
10. The petitioner resides at [REDACTED]. She contended at the hearing in this case that she did not receive any of the aforementioned overpayment or tax intercept notices, aside from the March 1, 2012 notice.

### DISCUSSION

Wisconsin statutes provide as follows:

At least 30 days before certification of an amount, the department of children and families shall send a notice to the last-known address of the person from whom that department intends to recover or collect the amount.

Wis. Stat. § 49.85(3)(b).

The statutes also provide that the notice shall: ...

2. Inform the person that he or she may appeal the determination of the department of children and families to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

3. Inform the person that, if the determination of the department of children and families is appealed, the department will not certify the amount to the department of revenue while the determination of children and families is under appeal.

Wis. Stat. §§ 49.85(3)(b)(2), (3).

Read together, the law directs that the right to appeal is limited to appeals filed within 30 days of the date the notice of the tax intercept is mailed to the last known address of the person from whom the department intends to collect. The petitioner's appeal was filed 184 days after the March 1, 2012 notice was mailed to her last known address of record with the agency. State jurisdiction is controlled by the letter of state statutes. Here, the agency did what it was supposed to do, and the petitioner appealed more than 30 days after the notice was mailed to the last known address. See, in accord, final Decisions in DHA Case No. ATI-40/73962 (Wis. Div. Hearings & Appeals March 15, 2006)(DWD); ATI-40/78821 (Wis. Div. Hearings & Appeals October 18, 2006)(DWD); and ATI-40/43347 (Wis. Div. Hearings & Appeals July 11, 2000)(DWD).

The petitioner dubiously claimed that, while she remembered the 2000 tax intercept, she didn't recall anything about a remaining balance; she testified that she thought that the \$700.00 intercept related to an unpaid credit card balance. She continued on to state that after the 2000 intercept, she had stopped filing. This obviously conflicts with her testimony regarding the outstanding balance, leaving one to question why she would stop filing in subsequent years if she was not aware that any balance remained. I do not note any credible evidence proffered by the petitioner establishing that the respondent used the wrong address or failed to update her address. There is no indication that any of the notices sent were returned as undeliverable.

The petitioner's appeal is untimely under these facts. The Wisconsin Legislature has specifically provided that the Department is to mail the tax intercept notice to the last known address the agency possesses, and that the petitioner has 30 days to appeal it. Period. Wis. Stat. § 49.85(3)(b). This tax intercept action may not be disturbed on these facts. Rather, it is affirmed by operation of law. The instant appeal must be dismissed.

### **CONCLUSIONS OF LAW**

That the petitioner's appeal of the Department's state income tax refund intercept regarding an AFDC overpayment debt is untimely as filed, and must be dismissed.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be, and the same hereby 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 served and 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 Madison,  
Wisconsin, this 14th day of December, 2012

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\sPeter McCombs  
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 December 14, 2012.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit