



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

LNP/144016

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to docket a warrant to recover a child care overpayment, a hearing was held on November 21, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the PACU had a basis for docketing a warrant against petitioner to recover a Wisconsin Shares overpayment.

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: April Lynch, Sr. Auditor
Provider Investigation Unit
Bureau of Child Care Administration
735 N. Water St, 10th Floor
Milwaukee, WI 53202

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner formerly was the sole proprietor/operator of a child daycare business named [REDACTED]. On May 31, 2011, the Wisconsin Department of Children and Families

(DCF) informed the provider that it was overpaid \$9,411.45 in Wisconsin Shares funds between October 31, 2010, and April 17, 2011, due to billing DCF for more children than were actually in care, and for billing for children in excess of the daycare's licensed capacity. The overpayment notice advised the petitioner to file any appeal of the overpayment within 30 days.

3. Petitioner appealed the overpayment in DHA Case No. ML-11-0249 (the companion Wisconsin Shares suspension appeal was ML-11-0248). Both cases were set for hearing on September 26, 2011. When the petitioner did not appear, the appeals were dismissed as abandoned by petitioner on September 28, 2011. The petitioner timely filed a timely rehearing request to contest the dismissal, and Administrative Law Judge Croft denied that rehearing request on November 9, 2011. Judge Croft's November 9 Order instructs the petitioner that the next step for appeal is to file a petition in Circuit Court within 30 days. No such filing occurred.
4. The petitioner made no payments against the overpayment in February, March or April, 2012. On September 1, 2012, the PACU informed petitioner that it was docketing a warrant in Milwaukee County to recover the remaining \$7,145.01 overpayment. The petitioner has made no payment against the overpayment since the warrant was docketed.

DISCUSSION

When a child care provider is subject to a specified overpayment of public assistance the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 201.04(5). One method of collection that the department may utilize is the use of a warrant under Wis. Stat., §49.195 (3m). Wis. Admin. Code, §DCF 201.04(5)(eh)1.a provides as follows: "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 may issue a warrant directed to the clerk of circuit court of any county." Any debtor who is subject to a warrant has the right to appeal the proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 201.04(5)(eh)1.e. The warrant is not withdrawn pending an appeal. *Id.*

The petitioner did not deny that she was the sole proprietor of [REDACTED] and also did not deny that she is the debtor in question. The petitioner vaguely asserted that she probably owes less than the remaining \$7,145.01, but offered no documentation or specific numbers to support that assertion. Thus, I find that DCF's assertion as to the amount of remaining debt to be correct.

The petitioner desired to have another opportunity to contest the underlying overpayment determination from May 2011. However, that ship has sailed; the petitioner should have appeared before Judge Croft to make that argument in September 2011, or appealed from Judge Croft's order to Circuit Court. The collection statute does not allow me to re-visit that issue here.

Although not the subject of my decision here, the petitioner asked DCF representative Lasonia McGee at hearing if the petitioner's suspension from Wisconsin Shares was permanent, or set to expire on a specific date. Ms. McGee graciously indicated that she would check with others in her department to get an answer to the petitioner's question.

CONCLUSIONS OF LAW

That the use of the warrant as a debt recovery mechanism against the petitioner, a child care provider, is allowed under Wis. Stat., §49.155(7m)(b) to collect the remaining overpayment amount of \$7,145.01.

THEREFORE, it is

ORDERED

That the petition 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 23rd day of November, 2012

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 23, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit