



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CTI/144330

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 04, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a telephonic hearing was held on January 08, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for December 5, 2012 was rescheduled.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of childcare payments for the period from November 14, 2010 to June 30, 2011, in the amount of \$6,499.72.

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: Darryl Caper, child care overpayment specialist  
Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a household of four with her children.

2. The petitioner received childcare assistance benefits from November 14, 2010 to June 30, 2011.
3. The county agency paid childcare payments to petitioner's child care provider for petitioner's children for the period from November 14, 2010 to June 30, 2011.
4. The county agency sent a March 7, 2012 Child Care Overpayment Notice to the petitioner stating that she received \$6,499.72 in childcare overpayments during the period from November 14, 2010 to June 30, 2011, due to client failing to properly participate in assigned and approved W-2 activities while her children attended child care.
5. The petitioner received the March 7, 2012 Child Care Overpayment notice.
6. The petitioner failed to timely file any appeal to the Division of Hearings and Appeals (DHA) regarding the March 7, 2012 Child Care overpayment notices, as indicated in Findings of Fact #4 and #5 above.
7. The Department sent an August 17, 2012 tax intercept notices to the petitioner informing her that it intended to intercept her state tax refunds to recover the remaining \$6,499.72 child care overpayment for the period from November 14, 2010 to June 30, 2011. That notice stated any appeal must be filed within 30 days of the date of that notice.
8. The petitioner did not timely appealed that tax intercept notice to the Division of Hearings and Appeals (DHA) because she filed her appeal on October 4, 2012, but alleged problems with her mail delivery.
9. As of the January 8, 2013, petitioner had made any repayments towards her \$6,499.72 childcare overpayment.
10. As of January 8, 2013, there is no reliable evidence in the hearing record that a garnishment from petitioner's employment income has been applied as a payment towards the petitioner's child care overpayment.

### DISCUSSION

Wis. Stat., §49.195(3), provides that the agency must determine if a childcare overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. The Department may utilize tax intercept as a means of recovering the overpayment. Wis. Stat., §46.85.

Wis. Stat. §49.85, provides that the department shall, 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**), food stamps, Aid to Families with Dependent Children (AFDC), and Medical Assistance.

The Department of Workforce Development 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).

The hearing right is described in Wis. Stat. §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

(Emphasis added).

The petitioner had a prior opportunity for a hearing on the merits of the March 7, 2012 child care overpayment in the amount of \$6,499.72 for the period of November 14, 2010 to June 30, 2011. The petitioner admitted that she failed to file any appeal to DHA regarding the March 7, 2012 child care overpayment notice.

In regard to the petitioner's appeal of her August 17, 2012 tax intercept notice, petitioner alleged with some credibility that she did not timely receive that notice due to problems with her mail delivery (she lives in a duplex where sometimes mail is wrongly delivered). As a result, the record is not clearly established that petitioner timely received that August 17, 2012 tax intercept notice to timely create the 30 day period for petitioner's appeal, and thus her October 4, 2012 will be considered timely for this appeal.

Based upon the above law and factual circumstances, the August 17, 2012 tax intercept notice does not provide new jurisdiction to address whether the underlying child care overpayment claim was determined correctly. As a result, I do not have jurisdiction to reverse the child care overpayment in whole or in part as part of this tax intercept appeal because the correctness of the overpayment should have been reviewed in a prior child care overpayment hearing.

The only issues remaining in this interception hearing are whether the amount to be intercepted differs from the overpayment amount, or whether the petitioner has not been credited with amounts already paid on the overpayment. The petitioner asserted that \$383.54 had been garnished from her employment income alleging a payment towards her child care overpayment. At the request of this ALJ, Mr. Caper investigated the alleged garnishment with the Department, and in his January 8, 2012 letter indicated that the alleged garnishment of \$383.54 had not yet been posted to petitioner's child care overpayment. He also explained that there is no proof that any such garnishment, if it existed, was to be applied towards petitioner's child care overpayment. The petitioner was unable to provide any testimony or evidence to contradict the county representative's testimony at the hearing or his later investigation regarding the garnishment. Furthermore, the petitioner has not met her burden of proof to establish that the remaining amount of her childcare overpayment was inaccurately determined to be \$6,499.72. If the petitioner receives reliable documentation, she may send that information to the Public Assistance Collection Unit and request that such payment be credited towards her remaining child care overpayment. However, based upon the evidence in the hearing record, the agency's action stands. The Department may utilize tax refund interception as a means of recovering the overpayment. See Wis. Stats. §49.85.

The determination by the county agency that the petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits. See 45 C.F.R. § 233.20(a)(13)(I) (...Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible....The State must take all reasonable steps necessary to promptly correct any overpayment.). See Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). As stated previously, the Department may utilize tax refund interception as a means of recovering the overpayment. See Wis. Stat. § 49.85.

### CONCLUSIONS OF LAW

1. The notice of the intent to intercept petitioner's income tax refund does not provide a new opportunity for a hearing on the merits of the child care overpayment claim.
2. The remaining amount of petitioner's child care overpayment as of January 8, 2013 is \$6,499.72.

3. The Department may certify the sum of \$6,499.72 as an amount due, and may proceed with the action to intercept the petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 21st day of February, 2013

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\sGary M. Wolkstein  
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 February 21, 2013.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit