



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

CTI/144796

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 25, 2012, under Wis. Stat., §49.85(4), and Wis. Admin. Code, §§HA 3.03(1), (4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a prior overpayment of child care overpayment, a hearing was held on January 3, 2013, by telephone. A hearing set for November 28, 2012 was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect a child care overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Keisha Love

Milwaukee County Dept. of Human Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County. He formerly resided in Milwaukee County.
2. Petitioner received child care assistance in 2011 and 2012. On April 10, 2012, the agency notified petitioner that he was overpaid \$3,718.08 in assistance from November 20, 2011 through March

- 31, 2012 because his residence was the same as the child care provider, claim no. [REDACTED]. The noticed informed petitioner that he could request a hearing on the issue within 45 days.
3. Following the overpayment notice, the county sent petitioner three “dunning” notices to which he did not respond.
  4. On September 14, 2012, the PACU sent petitioner a notice informing him that it intended to intercept his state tax refunds to repay the overpayment. The notice informed petitioner that he could appeal within 30 days.
  5. Petitioner filed this appeal on October 24, 2012.

### DISCUSSION

Wis. Stat., §49.85(2)(b), 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 AFDC and child care assistance.

The Department of Children and Families must notify the person that it intends to certify the overpayment 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)(b).

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.

The Department is required to recover all overpayments of public assistance benefits. Wis. Stat., §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). An appeal of a child care overpayment must be filed within 45 days of the notice. Wis. Admin. Code, §HA 3.05(3).

Because petitioner did not appeal the overpayment notice within 45 days of April 10, 2012, he cannot now contest the merits of the overpayment claim in this appeal of the tax intercept. The only issue is whether the PACU can implement the tax intercept. Furthermore, petitioner did not appeal the tax intercept timely either. An appeal of a tax intercept notice must be filed within 30 days of the notice. Wis. Stat., §49.85(3)(a)2. Thus there is a second reason why the Division of Hearings and Appeals does not have jurisdiction to address the merits of this appeal.

### CONCLUSIONS OF LAW

Petitioner’s appeal of a tax intercept to recover a child care overpayment was untimely.

**THEREFORE, it is**

**ORDERED**

That 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 7th day of January, 2013

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\sBrian C. Schneider  
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 January 7, 2013.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit