



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CTI/144972

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 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 December 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of her August 17, 2012 child care tax intercept is timely for jurisdictional purposes.

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, 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 received child care benefits for her children during the period of October, 2010 to December 31, 2010, and again from March 1, 2011 to June 30, 2011.

2. Milwaukee Enrollment Services (MES) sent September 19, 2011 Child Care Overissuance Notices to the petitioner at her correct address informing her that she had been overissued \$1,057.02 of child care benefits during the period of October 3, 2010 through December 31, 2010, and then again been overissued \$1,590.80 from March 2, 2011 through June 30, 2011 due to client error. Those notices stated that petitioner had 45 days to file any appeal of the September 19, 2011 child care overpayment notices.
3. The petitioner timely appealed of the child care overpayment with the Division of Hearings and Appeals (DHA) and a hearing was conducted on January 20, 2012 by ALJ Schneider in Case No. CCO-135440.
4. In his February 10, 2012 decision in CCO/135440, ALJ Schneider concluded that the county agency correctly determined that petitioner was overpaid child care assistance in 2010 and 2011 because she erroneously was paid for caring for her son.
5. The petitioner did not timely file a rehearing request regarding that February 10, 2012 decision.
6. MES sent Dunning notices to the petitioner on May 2, 2012, June 4, 2012, and July 3, 2012.
7. The Department sent an August 17, 2012 Child Care Tax Intercept Notice to the petitioner at her correct address during August, 2012 indicating that her remaining child care overpayment of \$2,355.82 would be intercepted from her tax refunds. That August 17, 2012 Notice stated that the remaining \$2,355.82 child care overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. See Exhibit 1. The August 17, 2012 Child Care Tax Intercept Notice was not returned as undeliverable. See Exhibit 1.
8. MES has received payments from the petitioner of \$506.40 which reduces her \$1,590.80 overpayment to \$1,084.80 as of about November, 2012.
9. During the hearing petitioner did not provide any evidence of any further payments to MES towards her remaining child care overpayment amounts.
10. The petitioner mailed an appeal with the Division of Hearings and Appeals (DHA) on the Child Care Tax Intercept issue which was postmarked on October 31, 2012 which was received at DHA on November 2, 2012.
11. As of November 25, 2012, the remaining Child Care overpayment amount was \$2,141.42.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC, **child care**, and medical assistance payments made incorrectly. The department 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 § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on October 31, 2012 which is more than two months after the date of the August 17, 2012 Child Care tax intercept notice. Later in the hearing, petitioner brought

up indirectly her September 6, 2012 Tax Levy Notice and the September 13, 2012 tax intercept notice of \$6.60. Both of those appeals were also untimely for the same reasons as the August 17, 2012 (not filed within 30 days of the date of the notice).

There is no credible or reliable evidence in the record that petitioner did not timely receive the August 17, 2012 tax intercept notice. During the December 12, 2012 hearing, the petitioner vaguely and unconvincingly questioned receiving the August 17, 2012 tax intercept notice, as she allegedly moved during some uncertain date during the summer/fall of 2012. However, petitioner was unable to establish with any reliable evidence any problems with her mail delivery. The MES representative testified that neither the August 17, 2012 tax intercept notice nor any of the other many child care overpayment notices sent to the petitioner were returned to the county agency or MES as undeliverable. The petitioner was unable to provide any good cause for her failure to file her tax intercept appeal until October 31, 2012.

The Department of Workforce Development 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).

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 the prior *opportunity* for an evidentiary hearing on the merits of the underlying child care overpayments, and a decision was issued on that overpayment in CCO/135440, as explained in Finding of Fact #2 - #5 above. The petitioner failed to timely file any rehearing or circuit court appeal of that February 10, 2012 decision by ALJ Schneider. As a result, the only issues which petitioner could have been contested even if her tax intercept appeal had been timely in this interception hearing would have been: 1) whether the amount to be intercepted differs from the overpayment amount, or 2) whether the petitioner has not been credited with amounts already paid on the overpayment. The petitioner was unable to refute that the remaining amount of the Child Care tax intercept amount was \$2,141.42 as of November 25, 2012. As neither of these points was contested by the petitioner, MES'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 Milwaukee Enrollment Services 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 also, 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. There is no jurisdiction regarding the issue of whether Milwaukee Enrollment Services (MES) correctly imposed an August 17, 2012 Child Care tax intercept against the petitioner's taxes, as the appeal is untimely.
2. The remaining amount of petitioner's child care overpayment was \$2,141.42 as of November 25, 2012.
3. The Department may certify the sum of \$2,141.42 (as of November 25, 2012) as a Child Care Overpayment amount due, and may continue to 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 18th day of February, 2013

\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 18, 2013.

Milwaukee County Department of Human Services
Public Assistance Collection Unit