



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

LVO/144973

PRELIMINARY RECITALS

Pursuant to a petition filed November 1, 2012, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to implement a levy to recover a child care overpayment, a hearing was held on January 9, 2013, by telephone. A hearing set for December 12, 2012 was rescheduled at the petitioner's request.

The issue for determination is whether the agency may utilize a levy to collect the overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Keisha Love
Milwaukee Early Care Administration
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 Milwaukee County.
2. Petitioner received child care assistance in 2008 and 2009. By a notice dated November 12, 2009, the agency informed petitioner that she was overpaid \$7,077.20 in assistance from May 1, 2008 through March 31, 2009, claim no. [REDACTED]. Petitioner did not appeal.
3. The agency sent a series of "dunning" notices to petitioner in the months after reminding her of the overpayment.

4. In late 2010 or early 2011 the PACU notified petitioner that it was instituting a lien on her property to recover the overpayment. Petitioner appealed, case no. LNO-117235, but the appeal was dismissed as abandoned.
5. On September 20, 2012, the PACU notified petitioner that it intended to levy her wages to repay the overpayment.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Admin. Code, §DCF 101.23(10)(b) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy 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 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice, and the November 12, 2009 overpayment notice informed petitioner of the limit. Once the time limit for appealing is past, the person no longer can appeal whether she owes the amount.

I note further problems with petitioner’s appeal. First, she filed an appeal on the overpayment in 2011 but abandoned it. She already had an opportunity to raise the issue before the Division of Hearings and Appeals. Second, an appeal of a levy notice must be filed within 21 days of the notice. Wis. Admin. Code, §DCF 101.23(10)(e). Petitioner filed this appeal 40 days after the notice.

Petitioner did not argue that there was mistaken identity or that she paid the debt. I thus must find that the levy was imposed correctly.

CONCLUSIONS OF LAW

Petitioner’s appeal of a levy imposed 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 14th day of January, 2013

\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 14, 2013.

Milwaukee Early Care Administration
Public Assistance Collection Unit