



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

REHEARING  
DECISION

CTI/145165

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephonic hearing was held on March 21, 2013, at Milwaukee, Wisconsin. A hearing was scheduled for January 10, 2013, but petitioner did not appear for that hearing. Petitioner's appeal was dismissed as abandoned. Petitioner requested a rehearing and a rehearing was granted on February 25, 2013 by ALJ Tedesco.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect the overpayment of childcare payments for the period from January 1, 2011 to September 30, 2011 in the remaining amount of \$9,408.48.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[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 St. 1st Floor  
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 with his wife, [REDACTED], and their four children.
2. The petitioner and his wife received childcare assistance benefits from January 1, 2011 to September 30, 2011.
3. The county agency paid childcare payments to petitioner's child care provider for petitioner's four children for the period from January 1, 2011 to September 30, 2011.
4. The county agency sent a May 29, 2012 Child Care Overpayment Notice to the petitioner at his correct address stating that he received \$15,226.66 in childcare overpayments during the period from January 1, 2011 to September 30, 2011, due to children attending child care during the period that the two parent household was ineligible for child care benefits.
5. The petitioner received the May 29, 2011 Child Care Overpayment notice.
6. The petitioner failed to timely file any appeal to the Division of Hearings and Appeals (DHA) regarding the May 29, 2012 Child Care overpayment notices, as indicated in Findings of Fact #4 and #5 above.
7. The county agency sent May 29, 2012 and May 30, 2012 child care overpayment notices to the petitioner's wife also stating that she received a \$15,226.66 overpayment during the period of January 1, 2011 to September 30, 2011.
8. The county agency sent Dunning notices to the petitioner on June 1, 2012, July 3, 2012, and September 4, 2012.
9. The Department sent an October 12, 2012 tax intercept notice to the petitioner informing him that it intended to intercept his state tax refunds to recover the remaining \$15,223.26 child care overpayment for the period from January 1, 2011 to September 30, 2011. That notice stated any appeal must be filed within 30 days of the date of that notice.
10. The petitioner timely appealed that tax intercept notice to the Division of Hearings and Appeals (DHA).
11. During the March 21, 2013 hearing, the MES representative stipulated that the remaining balance of petitioner's tax intercept amount is \$9,408.48.

### 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 May 29, 2012 child care overpayment in the amount of \$15,226.66 for the period of January 1, 2011 to September 30, 2011. The petitioner admitted that he failed to file any appeal to DHA regarding the May 29, 2012 child care overpayment notice. The petitioner alleged unconvincingly that he had not received the May 29, 2012 overpayment notice. However, petitioner was unable to establish with any evidence any problems with his mail delivery. Furthermore, the county representative testified that the May 29, 2012 child care overpayment notice was not returned to the county agency as undeliverable. Moreover, the petitioner's testimony was inconsistent and not credible that he had not received the May 29, 2012 notice.

Based upon the above law and factual circumstances, the October 12, 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. During the March 21, 2013 hearing, Mr. Caper stipulated that the remaining balance of petitioner's tax intercept amount is \$9,408.48. The petitioner was unable to provide any testimony or evidence to contradict the county representative's testimony or the stipulation he offered during that hearing. 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 March 21, 2013 was \$9,408.48.

3. The Department may certify the sum of \$9,408.48 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 9th day of April, 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 April 9, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit