



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

LVO/145166

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 8, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Department of Children and Families and the Public Assistance Collection Unit (PACU) of the Wisconsin Department of Workforce Development in regard to a levy issued to collect an overpayment of Child Care (CC) benefits, a hearing was held on January 15, 2013, at Milwaukee, Wisconsin.

Per statute, the issues for determination are whether (1) the PACU gave proper credit for payments against the outstanding debt, and/or (2) there is a mistaken identity of the debtor, and/or (3) whether the appeal was timely filed.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Destiny Cooper, CC Subsidy worker  
Milwaukee Early Care Administration  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Child Care (CC) benefits totaling at least \$5,166 were paid out on the petitioner's behalf from November 7, 2010 through August 31, 2011, for her children [REDACTED] and [REDACTED] to provider YMCA in Hales Corners, Wisconsin. The Department subsequently determined that \$5,166 of those benefits were overpayments.
3. A CC overpayment notice was sent to the petitioner on March 2, 2012. PACU sent a Repayment Agreement to the petitioner on April 3, 2012, and no timely response was received. Dunning letters were sent to the petitioner on May 2, June 4 and July 3, 2012. There was no response.
4. The petitioner asserts that she was confused about repayment because has reimbursed the state on a FoodShare overpayment, and she thought that the CC overpayment notices related to the other overpayment. After the Notice of Warrant was issued below, the petitioner did make a payment of \$153.09 against the CC overpayment.
5. From at least March through December 2012, the petitioner lived at [REDACTED].
6. The PACU issued a Notice of Warrant Docketed under Wis. Stat. §49.195(3m) in the amount of \$5,195.86 (including charges for issuing and mailing the warrant) on *September 23, 2012*. Exhibit 1. This Notice was sent to the petitioner at the 8939 W. Tripoli Avenue address. She filed this appeal on November 8, 2012.
7. The petitioner does not contest that she is the named debtor against whom the overpayment claim is established. She did not assert that the Department had failed to credit all of her payments against the debt.

### DISCUSSION

The petitioner seeks to contest a warrant issued during the course of the PACU's attempt to collect a claim for overpaid CC benefits issued in 2010-2011. The present case is filed under Wis. Stat. §49.195(3s), which allows a debtor to appeal the issuance of the warrant, but limits the appeal "to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." See Wis. Admin. Code §DCF 101.23(9)(a)5. PACU is allowed to apply funds obtained via levy, lien or tax intercept against the expenses incurred in filing and serving the levy. *Id.*, (a)3.

There is no question of mistaken identity in this case; PACU is proceeding against the correct debtor. The petitioner does contest the correctness of balance owed.

However, there is a clear limitation in the statute that a notice that is correctly addressed must be appealed from in **20** days. The time limitation is expressed in the statute as follows:

5. The department shall provide the debtor with notice and an opportunity for a hearing under **ch. 227, Stats.**, when a warrant has been issued. The debtor may request a hearing under **ch. 227, Stats.**, within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not withdraw a warrant based on a request for hearing.

Wis. Admin. Code **DCF 101.23(9)(a)5**. Thus, no jurisdiction exists for me to review the correctness of the instant action.

**CONCLUSIONS OF LAW**

Petitioner's appeal of PACU's warrant was not timely filed.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 5th day of February, 2013

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\sNancy J. Gagnon  
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 5, 2013.

Milwaukee Early Care Administration  
Public Assistance Collection Unit