



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNP/145294

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2012, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to issue a warrant to recover a Wisconsin Shares overpayment, a hearing was held on April 10, 2013, by telephone. Hearings set for December 19, 2012, January 16, and February 13, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether the issuance of a warrant was appropriate.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: James Price

Milwaukee Early Care Administration
1220 W. Vliet St., 200 East
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 formerly operated a child care center. In 2009 the Department established that she was overpaid \$9,399.66 in 2008 and 2009. Petitioner appealed the overpayment amount but later withdrew the appeal.
3. The Department sent petitioner notices demanding payment on January 5, February 2, and April 2, 2010. It is unclear what happened in the meantime, but in December, 2011, a levy of

petitioner's employment income began, and in addition the Department imposed an intercept on petitioner's state tax refunds.

4. By a notice dated November 1, 2012, the Public Assistance Collection Unit informed petitioner that it was docketing a warrant in Milwaukee County for collection of the balance still owed. Petitioner filed this appeal.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to child care assistance) 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. Stat., §49.195(3p); Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a warrant under Wis. Stat., §49.195 (3m). Wis. Admin. Code, §DCF 101.23(9)(a) 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 may issue a warrant directed to the clerk of circuit court of any county." The administrative code language echoes the language of Wis. Stat., §49.195(3m).

Any debtor who is subject to a warrant has the right to appeal the 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. Wis. Admin. Code, §DCF 101.23(9)(a)5. The warrant is not withdrawn pending an appeal. Id.

Petitioner argues that the warrant should be withdrawn because she agreed to the levy from her wages. She testified that she made the agreement in 2009, but the payment history shows that the levy did not begin until December, 2011, almost two years after the first notice demanding payment of the debt and twenty months after the third demand letter. Thus the debt was delinquent long before the wage levy started.

The Code allows the Department to utilize more than one collection method to recover an overpayment. Indeed, the Department already has utilized both a levy and a tax intercept to recover the debt owed by petitioner. I can see nothing that prevents the Department from also issuing a warrant. Wis. Stat., §49.195(3m)(h) provides that if the debtor arranges a repayment schedule and complies with it, the Department *may* withdraw the warrant, but the withdrawal is within the discretion of the Department. Withdrawal is not mandated because of the repayment schedule, and thus the Division of Hearings and Appeals does not have authority to order the warrant's withdrawal.

Petitioner also complains that the notice of the warrant was sent to her after the warrant was issued (it was put into the system on October 30, 2012 with the notice mailed on November 1). Wis. Stat., §49.195(3s) specifically provides that the Department must allow for a hearing *after* the warrant is issued, so the warrant could be issued before the notice.

The warrant issued in this case was allowed by state law. By the time any collection was commenced in this case, the debt was long delinquent, and the Department thus may take all legal actions to recover it.

CONCLUSIONS OF LAW

The Department's issuance of a warrant to collect a debt owed by petitioner was a legal, available means of collection of the debt.

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 12th day of April, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 12, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit