



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WTI/145352

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2012, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner's tax refund to recover a Wisconsin Works (W-2) overpayment, a hearing was held on April 24, 2013, by telephone. Hearings set for January 31 and March 6, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an overpayment of W-2 benefits.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: MacArthur Strawder
Maximus
4030 N. 29th Street
Milwaukee, WI 53216

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 W-2 benefits in 2009 and 2010.
3. By a notice dated January 31, 2011, the agency informed petitioner that she was overpaid \$6,280 in W-2 from November, 2009 through August, 2010, claim no. [REDACTED].

4. Petitioner did not appeal, and she agreed to a repayment schedule after dunning notices were sent. As of November, 2012, \$220 has been repaid. Petitioner missed some scheduled payments.
5. By a notice dated November 16, 2012, the PACU informed petitioner that it intended to intercept her state tax refunds to recover the overpayment.

DISCUSSION

Wis. Stat., §49.85(2)(a), 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 overpayment of general relief benefits, overissuance of FS, and Medical Assistance payments made incorrectly.

The Department of Health Services 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

The general rule is that the PACU will not implement a tax intercept until three dunning notices are sent with no response, or if the person agrees to repay but then defaults on the agreement. The record in petitioner's case shows that three dunning notices were sent, and then petitioner agreed to the repayment plan. After agreeing to the repayment plan petitioner missed a number of payments (although she did not stop paying completely). At this point I have no choice but to uphold the tax intercept action. My issue is whether the PACU correctly implemented the intercept, and I find that it did. I do not have discretion to order it to cease the collection effort. Petitioner would have to negotiate directly with the PACU.

CONCLUSIONS OF LAW

The PACU correctly implemented a tax intercept to recover an unpaid W-2 overpayment.

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 26th day of April, 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 April 26, 2013.

Wisconsin Works (W-2)
Public Assistance Collection Unit