



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

LNP/145432

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration in regard to Other, a hearing was held on January 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: James Price

Milwaukee Early Care Administration
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a provider of child care in 2009.

3. In December 2010 the Department sent notices to petitioner indicating child care overpayments to petitioner. Petitioner did not appeal the initial overpayment determinations. Petitioner received these notices.
4. On November 1, 2012, the Department sent a Notice of Warrant Docketed in Milwaukee County Pursuant to Section 49.195(3m)" related to an unsatisfied debt in the amount of \$4,113.39. The notice explained that an appeal needed to be filed within 21 days of the date of the notice. Petitioner received this notice.
5. Petitioner filed a request for hearing on November 26, 2012.

DISCUSSION

When a child care provider is subject to a specified overpayment of public assistance the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 201.04(5). 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 201.04(5)(eh)1.a provides as follows: "If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 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. " 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. §DCF 201.04(5)(eh)1.e. The warrant is not withdrawn pending an appeal. Id.

An appeal of the notice of warrant must be filed within 21 days of the date of the notice. Petitioner clearly received the notice and was informed of the 21 day requirement as petitioner attached a copy of the notice with her request for hearing. The request for hearing was filed on November 26, 2012 which was more than 21 days from the date of the November 1, 2012 notice. I have no jurisdiction to consider the merits of this appeal as it is untimely.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

That this appeal 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 12th day of February, 2013

\sJohn P. Tedesco
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 February 12, 2013.

Milwaukee Early Care Administration
Public Assistance Collection Unit