



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

LVO/145992

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), and § HA 3.03(1), and Wis. Stat. §49.195(3s), 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 February 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

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: Tamika Terrel, CC Subsidy Spec. Sr.
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 (telephonically)
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 \$6,464 were paid out on the petitioner's behalf from January 14, 2007 through May 5, 2007. The Department subsequently determined that \$6,464 of those benefits were overpayments, because the petitioner was not employed or participating in a W2 activity while her two children were in care. On August 30, 2007, Milwaukee County DHS issued a *CC Overpayment Notification* to the petitioner (claim number [REDACTED]), seeking recovery of the \$6,464. That Notification advised the petitioner to appeal the overpayment determination within 45 days; she did not do so. Exhibit 3.
3. PACU sent a Repayment Agreement to the petitioner on September 5, 2007. Dunning letters were sent to the petitioner on October 2, November 2, and December 4, 2007, which signifies that the petitioner did not make payments against the debt in the month prior to each dunning letter. There was no response. PACU also sent her a demand for payment. The petitioner denies receiving all of these documents, even though they were sent to her correct address.
4. The petitioner has reimbursed the state through various means (e.g., interception of her state tax refund for \$1,323.45 in February 2011) for some of the CC overpayment at this time. Specifically, the Department has a record of payments totaling \$2,099.85.
5. The PACU issued a Notice of Warrant Docketed under Wis. Stat. §49.195(3m) in the amount of \$6,509.55 (including charges for issuing and mailing the warrant) on May 19, 2010. Exhibit 8. The petitioner filed a hearing request in response to that Notice, but did not appear for her hearing. This office then dismissed that appeal on June 30, 2010. The petitioner filed a rehearing request, which was granted. Administrative Law Judge Duren then conducted a hearing on the petitioner's objection to levy, and issued a decision adverse to her in August 2010. See, DHA Decision No. LVO-75/111929 (August 24, 2010). PACU issued a notice of Public Assistance Collection Unit Levy for \$4,393.95 on **November 17, 2012**. Exhibit 13. This Notice was sent to the petitioner at the W. Allyn Street address, which was her most current address on file with the agency. The notice was not returned to the agency as undelivered. Although the petitioner claims to have moved in October 2012, she did not report her change of address until November 26, 2012. The notice advised the petitioner to file any appeal of this action within 21 days.
6. The petitioner does not contest that she is the named debtor against whom the overpayment claim is established. She asserted that she was not at fault for the entire overpayment, but did not identify any failure of the Department to correctly credit her with payments made against the debt.
7. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on December 14, 2012.

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 2007. 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.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning levy must be filed within **21** days of the date of the action. Wis. Admin. Code **DCF 101.23(9)(a)5**. The petitioner's appeal was filed **27** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

1. The petitioner's levy appeal 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 20th day of February, 2013

\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 20, 2013.

Milwaukee Early Care Administration
Public Assistance Collection Unit