



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/146763

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2013, under Wis. Admin. Code § DCF 101.23(10)(c)3. (February 2012) and Wis. Admin. Code § DCF 201.04(5)(ep)3.c. (April 2012), to review a decision by the Marathon County Department of Social Services [“County”] in regard to a levy issued by the Wisconsin Department of Children and Families [“DCF”], Public Assistance Collection Unit [“PACU”] for the purpose of collecting delinquent Child Care [“CC”] overpayment debts, a Hearing was held via telephone on March 27, 2013. At petitioner’s request a Hearing scheduled for February 26, 2013 was rescheduled.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction in this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jean Baranowski, Child Care Worker
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. Petitioner received a written letter notice dated November 16, 2012 entitled *Public Assistance Collection Unit Levy Issued* informing her that: "A levy has been issued by the Department of Children and Families, Public Assistance Collection Unit which seizes any of your property, up to the amount of the levy excluding exemptions" The November 16, 2012 letter notice stated that the amount due was \$981.62 and also informed petitioner of her Hearing appeal rights, including the limit for requesting a Hearing appeal.¹
3. Petitioner requested a Hearing by an undated letter received by DHA on January 22, 2013 via U.S. Mail postmarked January 17, 2013.

DISCUSSION

There is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning a levy is untimely if it is not filed within 20 days from the date on the notice. Wis. Admin. Code § DCF 101.23(10)(c)3. (February 2012) and Wis. Admin. Code § DCF 201.04(5)(ep)3.c. (April 2012); See also, Wis. Stat. § 49.195(3n)(s) (2011-12). A Hearing request is considered filed on the date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (September 2001). A Hearing request that is not filed within the 20-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the notice was dated November 16, 2012. Petitioner did not request a Hearing until January 17, 2013. This is well outside of the allowed 20-day time period. Therefore, petitioner's Hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner testified that she did not ask for a Hearing sooner because she thought the debt was being taken care of by her employer. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

Petitioner also testified that she moved twice during the time period of the overpayment and did not check her mail often. However, she also testified she lived continuously at the address to which the November 16, 2102 notice was sent from July 2012 onward.

Finally, it is noted that, even if petitioner's request for a Hearing had been filed in a timely manner, a Hearing concerning a levy is limited to questions of prior payment of the debt that DCF is proceeding against and mistaken identity of the debtor. Wis. Admin. Code § DCF 101.23(10)(c)3. (February 2012) and Wis. Admin. Code § DCF 201.04(5)(ep)3.c. (April 2012); See also, Wis. Stat. § 49.195(3n)(s) (2011-12). It is also noted that petitioner previously requested, and was granted, a Hearing concerning the merits of the overpayment underlying the levy. However, petitioner failed to appear for that Hearing. DHA Case No. CCO/138315 (Wis. Div. Hearings & Appeals February 23, 2012) (DCF).

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter because petitioner's request for a Hearing was not filed in a timely manner.

¹ The November 16, 2012 letter notice concerned the following 3 delinquent CC debts in the total amount of \$981.62: (1) Claim Number: [REDACTED]; Overpayment period: May 29, 2011 to October 1, 2011; \$951.82; (2) Claim Number: [REDACTED]; \$23.20; and, (3) Claim Number: [REDACTED]; \$6.60.

NOW, 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 28th day of March, 2013

\sSean P. Maloney
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 March 28, 2013.

Marathon County Department of Social Services
Public Assistance Collection Unit