



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/147285

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on May 01, 2013, at Milwaukee, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tamika Terrell

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Respondent determined that petitioner was overpaid Child Care benefits during the period of May 27, 2007, through November 3, 2007.

3. Respondent notified petitioner of the overpayment on December 17, 2007, and advised her that an appeal of the overpayment determination was due within 45 days of the date of the notice. A Repayment Agreement was sent to petitioner on January 3, 2008. Dunning notices were sent to petitioner on February 4, 2008, March 4, 2008, and April 2, 2008.
4. The Department issued a notice on May 16, 2008, stating that the petitioner's income tax refund would be intercepted in order to recoup the overpayment. The notice told petitioner that she could appeal to the Division of Hearings and Appeals within 30 days.
5. The petitioner filed a hearing request with the Division of Hearings and Appeals on February 13, 2013.

DISCUSSION

Wis. Stat. § 49.85, 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 food stamps, overpayment of Medical Assistance and child care payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state an income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. See Wis. Stat. § 49.85(3).

There are two problems with petitioner's appeal. First, she did not file it within 30 days of the tax intercept notice. Her appeal was filed almost five years after the notice.

Second, the hearing right is described in Wis. Stat., §49.85(4)(b), 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.* (Emphasis added)

The Petitioner appeals the overpayment of child care benefits as well as the Department's intent to intercept her income tax refund. The Petitioner has had a prior opportunity for hearing on the merits of the overpayment. Further, I do not have jurisdiction to hear that case on the merits at this time. An administrative law judge can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the effective date of the negative action, WI Stat § 49.152(1), WI Admin Code §HA 3.05(3), Child Day Care Manual Chapter 2 § 4.0.0. A negative action can be the denial of an application or payment of Child Care Benefits or the finding of an overpayment of that benefit. The petitioner's appeal was filed 1,885 days after the date of the December 17, 2007 notice. Thus, it is untimely, and no jurisdiction exists for considering the merits of the case.

Petitioner argues that she never received any notices of the overpayment, but I cannot conclude that she has established this by a preponderance of the evidence. The respondent noted that it never received any notices returned as undeliverable, and notices were always sent to the address of record reported by the petitioner. And this was a situation involving a notice, a repayment agreement, 3 dunning notices, and a tax intercept notice. These documents were mailed over a 6 month period. Receipt of any one of these documents should have sufficed to warrant action on the part of the petitioner.

As an aside, it makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with other welfare programs such as Food Stamps, an overpayment of Child Care Benefits must be recovered even if it was caused by agency error. See also WI Admin Code §12.23(1)(g), (3)(a). The Department may utilize tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 46.85. Thus, the use of the tax intercept is affirmed.

CONCLUSIONS OF LAW

1. Petitioner's appeals of both the original overpayment claim and the tax intercept notice are untimely.
2. Respondent's use of the use of the tax intercept is affirmed

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 3rd day of June, 2013

\sPeter McCombs
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 June 3, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit