



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LVO/147683

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 28, 2013, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a levy to recover a child care overpayment, a hearing was held on May 8, 2013, by telephone.

The issue for determination is whether the agency may utilize a levy to collect the overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Clarabel Camacho  
Racine County Dept. of Human Services  
1717 Taylor Ave.  
Racine, WI 53403-2497

**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 child care assistance in 2011 and 2012. By a notice dated April 5, 2011, the county informed petitioner that she was overpaid \$3,763.88 in assistance from October 3, 2010 through January 31, 2011, claim no. 9900338029.
3. Petitioner appealed on May 26, 2011, case no. CCO-132783. A hearing was scheduled for July 13, and petitioner missed the hearing. On July 14 she requested a reschedule that was granted.

The hearing was rescheduled on August 17, 2011, and petitioner missed it again. The appeal was dismissed as abandoned on October 28, 2011.

4. The agency sent dunning notices on December 12, 2011 and January 3, 2012 to petitioner's last known address.
5. By a notice dated February 24, 2013, the PACU informed petitioner that it would be imposing a levy on her wages to recover the overpayment. Petitioner filed this appeal.

### **DISCUSSION**

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Admin. Code, §DCF 101.23(10)(b) provides as follows: "1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt." Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy 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 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice, and the April 5, 2011 overpayment notice informed petitioner of the limit. I checked the appeal history and petitioner did appeal the overpayment notice as mentioned at the hearing. She testified that she requested a reschedule and then waited but heard nothing. The record shows that the hearing was rescheduled on August 17, 2011, so a notice of the new hearing would have been mailed on approximately August 5, about three weeks after the prior hearing.

In reviewing the history, I noticed that the petitioner filed that appeal on May 26, 2011, 51 days after the April 5 notice. Thus even if the hearing had been held the appeal likely would have been dismissed as untimely. At this point I see no error in the prior appeal's dismissal.

Petitioner did not argue that there was mistaken identity or that she paid the debt. I thus must find that the levy was imposed correctly.

### **CONCLUSIONS OF LAW**

Petitioner's appeal of the PACU's levy is limited to questions of prior payment and mistaken identity, and she has established no basis for remand of the levy.

**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 10th day of May, 2013

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\sBrian C. Schneider  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 10, 2013.

Racine County Department of Human Services  
Public Assistance Collection Unit