



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/148166

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 21, 2013, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner's income tax refund and apply it against a prior overpayment of child care assistance, a hearing was held on June 5, 2013, by telephone. A hearing set for April 24, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect a child care overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Sue Rohde

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**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. In September, 2009 the county agency informed petitioner that she was overpaid \$5,357.24 in child care assistance, claim no. [REDACTED]. Three "dunning" notices were sent. By a notice dated February 12, 2010 the PACU informed petitioner that it intended to intercept her state tax refunds to recover the overpayment. Petitioner did not appeal any of those actions.

3. Subsequently petitioner began to repay the overpayment by wage garnishments. The payments have been made except when petitioner was not working.
4. In 2013 the PACU intercepted petitioner's state tax refund. She then filed this appeal.

### **DISCUSSION**

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. See, specifically, Wis. Stat., §§49.195(3), 49.155. 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 overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The policy for collecting overpayments is noted in the Wisconsin Shares Child Care Assistance Manual, §2.1.6.1. After the client is notified about the overpayments, she is given an opportunity to agree to a repayment schedule. If that is not done, the agency will send up to three dunning notices requesting cooperation in repayment. If there still is no agreement, the case is referred to the PACU's central recovery unit. Among the recovery actions that unit will take are liens, levies, and tax intercepts.

Petitioner testified that she thought there would be no tax intercept if she was making payments. However, once the matter is sent to central collection as being delinquent, the PACU will utilize any method available to recover the claim. Had petitioner made an agreement to repay prior to 2010 and stuck with the payment schedule, no tax intercept would have been instituted. Once the tax intercept process is started, there is no legal basis for stopping it. I thus must conclude that the PACU correctly utilized the tax intercept despite petitioner making payments through wage garnishment.

### **CONCLUSIONS OF LAW**

The PACU is allowed to utilize a tax intercept to recover an overpayment despite petitioner's payment on the overpayment through wage garnishment because the wage garnishment did not begin until after the claim was sent to the central recovery unit.

**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 June, 2013

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\sBrian C. Schneider  
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 10, 2013.

Waukesha County Health and Human Services  
Public Assistance Collection Unit