



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

WTI/149080

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2013, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a hearing was held on June 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely, and if so, whether the agency properly issued a tax intercept to the Petitioner for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Nicole Hagen
Wisconsin Works (W-2)

, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On May 25, 1999, the agency issued a notice of overpayment of W-2 benefits in the amount of \$6,276 to the Petitioner at , Milwaukee, WI 53224. The notice informed the Petitioner of the right to request a hearing regarding the overpayment within 45 days of the effective date of the action.

3. On June 2, 1999, the agency issued a repayment agreement to the Petitioner at the same address. On July 2, 1999, August 3, 1999 and September 2, 1999, the agency issued dunning notices to the Petitioner at the same address.
4. On October 15, 1999, the agency issued a notice of tax intercept to the Petitioner in the amount of \$9,484 which included the W-2 overpayment of \$6,276 and additional overpayments related to FoodShare benefits and AFDC benefits. The notice informed the Petitioner of a right to a hearing regarding the tax intercept within 30 days of the date of the notice.
5. On October 2, 2001, November 2, 2001 and March 2, 2005, repayment agreements were sent to the Petitioner at the same address.
6. On February 25, 2004, July 1, 2009 and April 25, 2013, the Petitioner's taxes were intercepted. The remaining balance on the Petitioner's W-2 debt is \$4,638.90.
7. On April 30, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning AFDC or MA must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.21(1), Wis. Stats. An appeal of a tax intercept must be filed within 30 days of the notice. Wis. Stats. § 49.85. The Petitioner's appeal was filed almost 14 years after the date of the overpayment action and 13 years, 6 months after the issuance of the tax intercept. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note that the Petitioner testified she has been living at [REDACTED] for most of the relevant time period. She stated that she has moved in and out of the residence during this time. At times, she lived with her sister but kept the [REDACTED] address as her mailing address. She stated she was unaware of the overpayment or tax intercept actions until the most recent intercept on April 25, 2013.

The Petitioner's testimony is not credible given the numerous notices sent to her at the [REDACTED] address and the tax intercepts that occurred in 2004 and 2009.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 27th day of August, 2013

\sDebra Bursinger
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 August 27, 2013.

Wisconsin Works (W-2)
Public Assistance Collection Unit