



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

REHEARING DECISION

WTI/149080

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**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. On August 27, 2013, a decision was issued finding the Petitioner's appeal was not timely and dismissing the petition for review. On September 6, 2013, the Petitioner filed a request for a rehearing. On September 13, 2013, the request for rehearing was granted and the Petitioner was given until October 1, 2013 to submit new evidence. On September 23, 2013, the Petitioner submitted additional information. The additional information was forwarded to the agency on October 14, 2013 for a response.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of W-2 benefits in the amount of \$6,276 for the period of January 1, 1998 – December 31, 1998.

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: Nicole Hagen  
Wisconsin Works (W-2)

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) 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 [REDACTED], [REDACTED]. 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.
4. On July 2, 1999, the agency issued a dunning notice to the Petitioner at the same address.
5. From August 2, 1999 – July 18, 2000, the Petitioner was incarcerated. During that time, the agency issued two additional dunning notices on August 3, 1999 and September 2, 1999. In addition, during that time period, 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.
6. From June 11, 2001 – September 2, 2001, the Petitioner was incarcerated.
7. On October 2, 2001 and November 2, 2001, repayment agreements were sent to the Petitioner at the same address.
8. From May 15, 2003 – August 8, 2004, the Petitioner was incarcerated. During that time, on February 25, 2004, the Petitioner's taxes were intercepted.
9. On March 2, 2005, a repayment agreement was sent to the Petitioner at the same address.
10. From March 15, 2005 – July 13, 2006 and from January 27, 2007 – August 12, 2008, the Petitioner was incarcerated.
11. From April 10, 2009 – April 3, 2012, the Petitioner was incarcerated. During that time, on July 1, 2009, the Petitioner's taxes were intercepted. The Petitioner's sister informed her via letter that her taxes had been intercepted.
12. On April 25, 2013, the Petitioner's taxes were intercepted. The remaining balance on the Petitioner's W-2 debt is \$4,638.90.
13. 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.

Petitioner states that she did not receive any notices regarding the W-2 overpayment or tax intercepts until April, 2013 when she was released from prison. She concedes that she maintained her mailing address at [REDACTED], [REDACTED] during the entire period from 1998 – 2013. She never notified the agency of any change in address during that period of time.

The Petitioner submitted documentation from the Department of Corrections and Milwaukee County Jail in support of her argument that she never received any notices because she was incarcerated or living elsewhere. The evidence does not support her argument.

The original overpayment notice was issued to the Petitioner on May 25, 1999. The Petitioner stated in her submission of September 23, 2013: "In late May of 1999 to late July of 1999, I was in Dallas, TX, living with my sister. Because I had a warrant from probation." This is insufficient to demonstrate that the Petitioner did not receive the notice from the agency dated May 25, 1999 and additional notices dated June 2 and July 2, 1999.

Likewise, the Petitioner's evidence is insufficient to demonstrate that she was living at [REDACTED] [REDACTED] from September 2, 2001 – December, 2001 and that she did not or could not have received the notices issued from the agency on October 2, 2001 and November 2, 2001.

The Petitioner provided no explanation with regard to why she would not have received the notice issued March 2, 2005.

Finally, Petitioner concedes that she became aware of a tax intercept in or about July, 2009 and concedes that she never followed up to determine the reason of the tax intercept.

Based on the evidence, I conclude that there is insufficient evidence to conclude that the Petitioner did not or could not have received the notice of overpayment on May 25, 1999 and her appeal 13 years later is untimely. With regard to the tax intercept, considering the facts in a light most favorable to the Petitioner, she became aware of the intercept in or about July, 2009. Her appeal of the intercept almost 4 years later is not timely.

**CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely for the overpayment action and the tax intercept action.

**THEREFORE, it is ORDERED**

That the petition be, and hereby is, dismissed.

**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 22nd day of October, 2013

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\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 October 22, 2013.

Wisconsin Works (W-2)  
Public Assistance Collection Unit