



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WTI/149591

PRELIMINARY RECITALS

Pursuant to a petition filed May 25, 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 August 28, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether, MAXIMUS, the agency correctly imposed a tax intercept upon Petitioner.

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: MacArthur Strawder, Maximus
Wisconsin Works (W-2)
4201 N. 27th Street
Suite 400, 4th Floor
Milwaukee, WI 53216

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 14, 2012, the agency sent Petitioner a Wisconsin Works Overpayment Notification, claim number [REDACTED], indicating she was overpaid W-2 benefits in the amount of \$7055.00

- for the period of 02/09/07 to 12/31/07. The notice included an overpayment worksheet. (Exhibit 4, pgs. 33-37)
3. On December 14, 2012, the agency sent Petitioner a second Wisconsin Works Overpayment Notification, claim number [REDACTED], indicating that she was overpaid W-2 benefits in the amount of \$4526.00 for the period of 01/01/08 to 08/31/08. The notice included an overpayment worksheet. (Exhibit 4, pgs. 29-32)
 4. On December 14, 2012, the agency sent Petitioner a third Wisconsin Works Overpayment Notification, claim number [REDACTED], indicating she was overpaid W-2 benefits from 08/12/10 to 11/30/10, in the amount of \$1865.00. The notice included the overpayment worksheet. (Exhibit 4, pgs. 26-28)
 5. On December 14, 2013, the agency sent Petitioner a fourth Wisconsin Works Overpayment Notification, claim number [REDACTED], indicating she was overpaid W-2 benefits from 04/06/11 to 03/31/12 in the amount of \$7123.00. The notice included the overpayment worksheet. (Exhibit 4, pgs. 21-25)
 6. Petitioner didn't file a request for a fact finding when she received the overpayment notices on or about December 14, 2013. (Testimony of Petitioner and Mr. Strawder)
 7. On January 1, 2013, the agency sent Petitioner a repayment agreement. (Exhibit 5)
 8. The agency sent Petitioner three dunning notices to remind her about the overpayment on February 4, 2013, March 4, 2013 and on April 2, 2013. (See Exhibit 4, pgs. 15, 17, and 19)
 9. On May 17, 2013, the agency sent Petitioner a notice that the State of Wisconsin would be intercepting any tax refund, tax credit or lottery winnings because she has an outstanding debt of \$29,569.00 for overpaid public assistance benefits. (Exhibit 2)
 10. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 25, 2013.

DISCUSSION

W-2 is Wisconsin's public assistance work program, and is outlined at Wis. Stat. §§49.141-.161. It supplanted the prior federal-state cash payment program, Aid to Families with Dependent Children (AFDC), described at Wis. Stat. §49.19.

The Department of Children and Families (DCF) must recover an overpayment of benefits paid under Wis. Stats. §49.148(1)(a), (b) or (c). Wis. Stats. §49.161- *Wisconsin Works; overpayments*

A W-2 overpayment may occur as a result of an error by either the participant or the W-2 agency. These are referred to as administrative errors, inadvertent household errors and intentional program violations. *Wisconsin Works Manual (W-2 Manual) §10.3.1; Wis. Admin. Code §DCF 101.23* Claims for inadvertent household errors may be established for up to six years, while claims for administrative errors are limited to twelve months from the date of discovery. (*W-2 Manual*) §10.3.2.1 and §10.3.2.2

If the participant does not repay the overpayment debt, DCF has a number of means by which it may collect the debt:

“A debt shall be considered delinquent if the department does not receive a debtor's payment by the due date 3 times over the life of the debt. A delinquent debt may be subject to warrant and execution under s. [49.195 \(3m\)](#), Stats.; levy under s. [49.195 \(3n\)](#), Stats.; **setoff against a refund under ss. [49.85](#) and [71.93](#)**, Stats.; and other authorized collection methods. The department may recover a delinquent debt by more than one

means of collection at the same time. A delinquent debt retains delinquent status regardless of any future payment on the debt.”

Emphasis added. Wis. Admin. Code §DCF 101.23(8)

Further, Wis. Stats. §49.85(2)(b) requires the Department of Children and Families (DCF) to certify to the Department of Revenue any amounts that may be recovered under Wis. Stats. §49.161. *See also Wis. Stats. §71.93 Setoff for other state agencies.*

Petitioner asserts that she did not get all of the overpayment notices and that she did not get the repayment agreement until a few weeks before the August 28, 2013 hearing date. However, Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613. It should also be noted that Wis. Admin. Code §DCF 101.23(2)(b) states that documentation showing that notice was sent to the participant’s last known address and an absence of evidence that the notice was returned to the agency as undeliverable shall be prima facie evidence that the notice was delivered and received.

In the case at hand, the agency sent all the overpayment notices and the dunning notices to Petitioner at the same, correct address. Petitioner acknowledges timely receiving at least two of the overpayment notices and all of the dunning notices. There is no evidence in the record to support the contention that Petitioner did not receive the remaining notices or the repayment agreement. Still, Petitioner did not make a payment toward the debt and Petitioner did not appeal the overpayment determination. (Testimony of Petitioner) Consequently, per Wis. Admin. Code §DCF 101.23(8), the agency correctly sought to intercept Petitioner’s tax returns to satisfy the W-2 overpayment.

At the hearing, Petitioner wished to appeal the overpayment determination, itself, but there is no jurisdiction for the Division of Hearings and Appeals to address the merits of the overpayment determination.

A person who wishes to contest an overpayment issued under Wis. Stats. §49.148, has the right to request a fact finding review by the W-2 agency under Wis. Stats. §49.152(2). *Wis. Admin. Code §101.23(2)(d)*. The request for a fact finding determination of the overpayment determination must be filed with the W-2 agency within 45 days of the notice. *Wis. Stats. §49.152(1)* This was clearly stated in the overpayment notices. If a person disagrees with the fact finding determination of the W-2 agency, they can then file a request for a “departmental review” within 21 days of the date the W-2 agency mails its findings. *Wis. Stats. §49.152(2)(b)* The Division of Hearings and Appeals is the apparent fact finder for DCF in a “departmental review”

Because Petitioner didn’t file a request for a fact finding within 45 days of December 14, 2012 date on the overpayment notices, there is no jurisdiction for the Division of Hearings and Appeals to address the merits of the overpayment determination.

CONCLUSIONS OF LAW

The agency correctly imposed the tax interception upon Petitioner.

THEREFORE, it is

ORDERED

That the petition 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 23rd day of October, 2013.

\sMayumi M. Ishii
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 23, 2013.

Wisconsin Works (W-2)
Public Assistance Collection Unit