



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/149725

PRELIMINARY RECITALS

Pursuant to a petition filed June 3, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA to intercept the petitioner's income tax refund and apply it against a prior overpayment of Child Care (CC) benefits, a hearing was held on July 3, 2013, by telephone.

The issues for determination are (1) whether this Administrative Law Judge (ALJ) has jurisdiction to consider the merits of the petitioner's appeal, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of \$5,597.59 in W-2 CC benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Interpreter: Mr. [Redacted]

Petitioner:



Respondent:

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

By: Keisha Love, CC Subsidy Spec. Sr.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Minnesota; he formerly resided in Wisconsin.
2. On *March 15, 2013*, the Department issued a written notice to the petitioner advising that it intended to intercept his state income tax refund to collect \$5,597.59 (*claim #3900350663*) in alleged W-2 childcare overpayments. The notice advised the petitioner to file an appeal, if desired, within 30 days of the notice date. See Exhibit 1. The petitioner received this notice, and subsequently appealed from the interception letter on June 3, 2013.
3. On March 23, 2012, the Department issued a Child Care Overpayment Notification to the petitioner advising that he had been overpaid \$5,597.59 in childcare benefits for the July 31, 2011 through December 31, 2011, period. The petitioner filed a fair hearing request to challenge that overpayment on May 12, 2012, and a hearing was conducted by ALJ Tedesco. He issued a decision dismissing that appeal, due to late filing, on September 12, 2012.

### DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). The petitioner received such W-2 childcare funding for a period of time in 2011. In March 2012, the agency determined that he had been overpaid childcare benefits, and notified him of the same. When the petitioner did not begin repaying the alleged overpayment, the agency referred his case to the Department of Revenue for collection via tax refund interception. The petitioner appealed in an effort to contest the interception.

Wis. Stat. § 49.85, provides that the Department of Workforce Development shall, at least annually, certify to the Department of Revenue the amounts to be recovered as a result of overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or W-2 payments made incorrectly.

The Department of Workforce Development must notify a person that it intends to certify an 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:

(3) NOTICE REQUIREMENTS. ...

(b) At least 30 days before certification of an amount, the department of workforce development shall send a notice to the last-known address of the person from whom that department intends to recover the amount. The notice shall do all of the following:

1. Inform the person that the department of workforce development intends to certify to the department of revenue an amount that the department of workforce development has determined to be due under s.49.125, 49.161 or **49.195(3)**, for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of workforce development to certify the amount by requesting a hearing under sub. (4) **within 30 days** after the date of the letter and inform the person of the manner in which he or she may request a hearing.

(emphasis added)

Wis. Stat. §49.85(3).

The overpayment in question resulted from a type of overpayment listed in §49.195(3). Because the petitioner did not file his appeal from the March 2013 interception notice until June 2013 (more than the statutory 30 days), I have no jurisdiction to consider the merits of his appeal. Thus, the agency's action stands.

The petitioner has established that he is a disabled person on SSI, and asks for leniency in repayment of the claim. I will forward his concerns to the State's collection office via a letter (due to his limited English proficiency), a copy of which will be enclosed with the petitioner's copy of this Decision.

### **CONCLUSIONS OF LAW**

1. Because the petitioner failed to timely appeal from his March 2013, tax refund interception notice, this ALJ lacks jurisdiction to consider the merits of his appeal. Therefore, the agency's action stands.

**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 Madison,  
Wisconsin, this 5th day of July, 2013

---

\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
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 July 5, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit