



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNO/149761

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2013, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on July 03, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Public Assistance Collections Unit (PACU) correctly issued a warrant against Petitioner's real and personal property to recoup a Child Care/W-2 overpayment.

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: Lorena Horton, Child Care Subsidy Specialist; Keisha Love, Child Care Subsidy Specialist 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:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On April 8, 2005, Milwaukee County (the agency) sent Petitioner a Child Care Overpayment Notification, claim number [REDACTED], indicating that she was overpaid child care benefits in the amount of \$4,357.20 for the period of January 1, 2005 and March 31, 2005. (Exhibit 3, pgs. 13-14)
3. On May 5, 2005, the agency sent Petitioner a Repayment Agreement. (Exhibit 3, pgs. 15-16)
4. The agency sent Petitioner dunning notices, reminding her of the overpayment on June 2, 2005, July 5, 2005 and August 2, 2005. (Exhibit 3, pgs. 17-19)
5. All of the notices were sent to Petitioner at [REDACTED], Milwaukee, WI. (Exhibit 3, pgs. 13-19) Petitioner confirmed this address as being correct. (Testimony of Petitioner)
6. The agency intercepted Petitioner's taxes returns in 2006, 2007, 2008 and 2009, which yielded payments in the amount of \$580.90. (Exhibit 3, pg. 8)
7. On May 17, 2013, PACU sent Petitioner a notice indicating that it was issuing a warrant because the remaining balance of the overpayment, \$3,786.30 had not been paid. (Exhibit 2)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 31, 2013.

### DISCUSSION

#### *The Overpayment*

At the hearing, Petitioner wanted to contest the overpayment determination. However, a hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3), Wisconsin Shares Child Care Assistance Manual, Chapter 2, § 2.1.5.3. A negative action can include the termination of benefits, or the issuance of an overpayment notice.

Petitioner testified that there is no reason she would not have received the April 8, 2005 notice advising her of the overpayment claim and Ms. Horton testified that there is no indication that the notice was returned to the agency as undeliverable. That April 8, 2005 notice clearly stated that Petitioner needed to file a request for fair hearing within 45 days. Petitioner did not file her appeal until May 31, 2013, about eight years past the appeal deadline. Because the petitioner's appeal of the child care overpayment determination is untimely, there is no jurisdiction to address the accuracy of the overpayment determination.

Further, pursuant to Wisconsin Shares Child Care Assistance Manual §2.1.6.2 appeals of warrant actions are limited to issues of prior payment and mistaken identity. *See also* Wis. Stats. §49.85(4)(b) As such, Petitioner is also precluded from contesting the overpayment determination in this appeal of the warrant issued by PACU.

It should be noted that Petitioner did not raise any issue with regard to prior payments made to satisfy the overpayment, although she incredibly claimed she was unaware of the interception of her tax returns between 2006 and 2009. Petitioner attempted to raise an issue of mistaken identity, but there is no evidence in the record to support this contention and Petitioner testified that all relevant notices went to the correct address.

*The Warrant*

Wis. Stats. §49.195(3) states that agencies, such as Milwaukee Enrollment Services, must determine when an overpayment in child care benefits has occurred and that it must, “promptly recover all overpayments”.

Wis. Stats. §49.195(3m)(a)1 further states, “If any person fails to pay the department any amount determined under sub.(3), no review or appeal of that determination is pending and the time for requesting review or taking an appeal has expired, the department may issue a warrant directed to the clerk of circuit court of any county.” The warrant is considered a “perfected lien upon the person’s right, title and interest in all real and personal property located in the county in which the warrant is entered.” Wis. Stats. §49.195(3m)(a)3.

Wis. Admin. Code §DCF 201.04(5)(eh)(1)(a) also states, “If the department does not receive a debtor’s payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.”

Wisconsin Share Child Care Assistance Manual §2.1.6.2 limits the use of warrants/liens to debts that exceed \$300.00.

Petitioner’s case satisfies all the aforementioned criteria. 1) Petitioner has not paid off the overpayment; 2) There was no appeal pending regarding the overpayment determination at the time the warrant was issued, 3) The time for requesting an appeal or review of the overpayment determination expired, 4) Petitioner missed at least three payments, as evidenced by the incomplete repayment agreement and three dunning notices; and 5) the balance of the debt exceeds \$300. Consequently, PACU had the authority to issue and correctly issued a warrant against Petitioner’s real and personal property.

### **CONCLUSIONS OF LAW**

The Public Assistance Collections Unit (PACU) correctly issued a warrant against Petitioner’s real and personal property to recoup a Child Care/W-2 overpayment.

**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 16th day of August, 2013.

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\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 August 16, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit