



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/150257

PRELIMINARY RECITALS

Pursuant to a petition filed June 22, 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”] in regard to Child Care [“CC”], a Hearing was held via telephone on August 15, 2013.

The issue for determination is whether the Division of Hearings and Appeals [“DHA”] has jurisdiction to decide the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tamika Terrell, Child Care Subsidy Specialist, Senior
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.

2. The following Claims have been established against petitioner in the total amount of \$841.20 relating to overpayments of CC: (I) Claim [REDACTED]; May 5, 2002 to May 2, 2002; \$835.00; and, (II) Claim [REDACTED]; levy fee; \$6.20. Exhibits #A3 & #A4.
3. The Wisconsin Department of Children and Families ["DCF"] mailed a written notice dated May 17, 2003 to petitioner's last known address; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted to repay the CC overpayment identified in *Findings of Fact* #2, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing and the DHA address to which the Hearing request should be mailed. Exhibit #A3.
4. Petitioner requested a Hearing by a *Request For Fair Hearing* form dated June 18, 2013 that was received by DHA on June 25, 2013 via U.S. Mail postmarked June 22, 2013. Exhibit #A2.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. , Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated May 17, 2003. As required, the notice was sent to petitioner's last-known address. See, Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2011-12). Petitioner's request for a Hearing was not made until June 2013. This is more than 10 years after the date of the tax intercept notice and is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Petitioner testified that she did not request a Hearing sooner because she made a payment agreement to start having money taken out of her Wisconsin Works ["W-2"] checks. This does not create jurisdiction where none otherwise exists. Further, the MECA representative at the August 15th Hearing testified that no repayment agreement was ever made in this matter and, in any event, MECA does not collect repayments by taking money from W-2 checks.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein and the same is hereby DISMISSED. DCF may certify the total amount of \$841.20 to the Wisconsin Department of Revenue, pursuant to Wis. Stat. § 49.85 (2011-12), for purpose of a tax intercept of petitioner to recover the CC overpayments listed in *Findings of Fact* #2, above.

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 19th day of August, 2013

\sSean P. Maloney
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 19, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit