



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/150617

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2013, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Department of Children and Families, by the Milwaukee Early Care Administration (MECA) in regards to the imposition of a lien to collect a past due child care overpayment public assistance debt, a telephone hearing was held on August 1, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the appeal contesting the Department's imposition of a lien against the petitioner is timely as a matter of law.

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: Joseph McCleer, Attorney
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a child care benefits assistance group in at least the period of March 14-July 31, 2010.

2. On December 9, 2010, the Department issued a Child Care Overpayment Notification to the petitioner informing her that she had been overpaid \$3,947.56 in Child Care Benefits during the period of March 14-July 31, 2010, due to a client error. See, Exhibit R-12.
3. The petitioner appealed the overpayment determination to the Division of Hearings & Appeals on December 13, 2010, in DHA Case No. CCO-75/116258. See, Exhibit R-15, at p.1.
4. On March 21, 2011, Administrative Law Judge Marina Croft sustained the overpayment determination in full in DHA Case No. CCO-75/116258, finding the petitioner had been overpaid \$3,947.56. See, Exhibit R-15, at p.3.
5. On April 11, 2011, the Department issued a Repayment Agreement to the petitioner asking her to agree to repay the overpaid \$3,947.56, but received no reply. See, Exhibit R-16.
6. On May 3, June 2, and July 5, 2011, the Department issued dunning letter to the petitioner asking her to repay the overpaid \$3,947.56; but no reply was received from her. See, Exhibit R-17.
7. On August 12, 2011, the Department issued a Notice to the petitioner informing her that her state income tax or homestead refunds may be intercepted in the future to be applied to the past due child care overpayment debt of \$3,947.56. See, Exhibit R-18.
8. On or about August 16, 2011, the petitioner filed an appeal with the Division of Hearings & Appeals to contest the tax intercept action taken by the Department on August 12, 2011, and this appeal was designated DHA Case No. NSW-134669. See, Exhibit R-19.
9. On August 29, 2011, the petitioner filed a written withdrawal of the appeal in NSW-134669. See, Exhibit R-20.
10. On August 30, 2011, the Division of Hearings & Appeals issued a dismissal Decision in DHA Case NSW-134669, pursuant to the petitioner's withdrawal of August 29, 2011. See, Exhibit R-20.
11. On May 14, 2012, the petitioner filed a new appeal with the Division of Hearings & Appeals to again contest the state income tax refund intercept action. This appeal was denominated DHA Case No. CTI-140963. See, Exhibits R-21, R-22.
12. On May 24, 2012, the Department issued a Notice of Warrant Docketed in Milwaukee County to the petitioner informing her that the Department had filed a lien with Milwaukee County pursuant to Wis. Stat. § 49.195(3m) to create a lien on all of her personal and real property, in the amount of \$3,964.16, which sum included court costs added to the original lien amount. See, Exhibit R-22.
13. On August 9, 2012, Administrative Law Judge Kenneth D. Duren issued a Decision in DHA Case No. CTI-140963, dismissing the appeal as abandoned when the petitioner failed to appear for the hearing at the appointed and noticed time and date. See, Exhibit R-23.
14. On July 15, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals in the instant case, to dispute the imposition of the lien in Milwaukee County by the Department as she was notified on May 24, 2013; and to again attempt to dispute the underlying overpayment determination. See, Exhibit R-24, at p. 3.
15. Of record, court costs added to the \$3,947.56 overpayment debt of August 12, 2011, were \$10 ("Warrant Fee") imposed on May 22, 2012; and \$6.60 ("Levy Fee") imposed on September 1, 2011. The total due on this debt is \$3,964.16.

DISCUSSION

There is no jurisdiction if a request for a hearing is not filed timely. A request for a hearing concerning the docketing of a warrant is untimely if it is not filed within 20 days from the date on the notice. Wis. Admin. Code § DCF 101.23(9)(a)5. See also, Wis. Stat. § 49.195(3s). A hearing request is considered filed on the

date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c). A hearing request that is not filed within the 20-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case, the notice of the lien warrant was dated May 24, 2012, and served by mail. Petitioner did not request a hearing on this issue until July 15, 2013. This is far, far outside of the allowed 20-day time period. Therefore, petitioner's hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal contesting the lien.

Finally, it is noted that even if petitioner's request for a hearing had been filed in a timely manner, a hearing concerning the docketing of a warrant is limited to questions of prior payment of the debt that DCF is proceeding against and mistaken identity of the debtor. Wis. Admin. Code § DCF 101.23(9)(a)5; see also, Wis. Stat. § 49.195(3s). The petitioner did not assert that she is not the debtor identified, nor that she has ever paid this debt in part or in full.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter because petitioner's request for a hearing was not filed in a timely manner.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 27th day of August, 2013

\sKenneth D. Duren, Assistant Administrator
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 27, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Joseph.McCleer@wisconsin.gov