



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/151114

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2013, under Wis. Admin. Code § DCF 201.07(1)(e) and Wis. Stat. §49.195(3s) to review a decision by the Brown County Human Services Department and the Public Assistance Collection Unit (PACU) of the Wisconsin Department of Workforce Development, in regard to a levy issued to collect an overpayment of Wisconsin Works (W-2) benefits, a hearing was held on September 10, 2013, at Green Bay, Wisconsin.

Per statute, the issues for determination are whether (1) the PACU gave proper credit for payments against the outstanding debt, and/or (2) there is a mistaken identity of the debtor.

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: Diane Van Asten, fraud investigator
Brown Co. Human Services

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Brown County, and was a resident therein throughout 2011.

2. Wisconsin Works (W2) benefits totaling more than \$423.00 were paid out on the petitioner's behalf for non-contiguous months from June 2010 through April 2011. The county agency subsequently determined that \$423 of those benefits were overpayments, because the petitioner had not been reported as a household member to the agency by the household's casehead, [REDACTED], and the household's income had been under-reported. On June 6, 2011, Brown County HSD issued a *W2 Overpayment Notification* to both Ms. [REDACTED] and the petitioner, seeking recovery of the overpayment. W2 overpayments occurred in June, July, September, October and December, 2010, and March and April 2011. That *Notification* advised the petitioner to appeal the overpayment determination within 45 days; he did not do so.
3. The petitioner has not voluntarily reimbursed the state for any of the W2 overpayment at this time.
4. The Department's PACU sent a Repayment Agreement to the petitioner and [REDACTED] (separately) on July 5, 2011, and dunning letters on August 2, September 2, and October 4, 2011. There was no response. PACU also sent the petitioner a demand for payment.
5. The PACU issued a *Public Assistance Collection Unit Levy Issued* notice under Wis. Stat. §49.195(3m) in the amount of \$392.90 (including charges for issuing and mailing the warrant) on July 25, 2013. Exhibit 2.
6. As of August 5, 2013, the outstanding balance on claims # [REDACTED] and # [REDACTED] was \$362.20, due to commencement of lien recovery.
7. The petitioner does not contest that he is the named debtor against whom the overpayment claim is established. He also offered no evidence to suggest that he has made payments against the overpayment claim, with the exception of a tax refund interception in 2012, a levy recovery taken in August 2013, and another levy in September 2013.

DISCUSSION

The petitioner seeks to contest a warrant issued during the course of the PACU's attempt to collect a claim for overpaid W2 benefits issued in 2010-2011. The present case is filed under Wis. Stat. §49.195(3s), which allows a debtor to appeal the issuance of the warrant, but limits the appeal "to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." See Wis. Admin. Code §DCF 101.23(9)(a)5. PACU is allowed to apply funds obtained via levy, lien or tax intercept against the expenses incurred in filing and serving the levy. *Id.*, (a)3.

There is no question of mistaken identity in this case; PACU is proceeding against the correct debtor. Further, testimony at the hearing and submitted state records correctly catalogued previous nonpayment against the outstanding debt. There is, therefore, no basis to disturb PACU's warrant.

The petitioner also filed an appeal from a tax interception action for recovery of an FS overpayment; that decision will be issued separately, as different rules apply.

CONCLUSIONS OF LAW

Petitioner's appeal of PACU's warrant is limited to questions of prior payment and mistaken identity, and he has established no basis for the lifting of that warrant.

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 11th day of September, 2013

\sNancy J. Gagnon
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 September 11, 2013.

Wisconsin Works (W-2)
Public Assistance Collection Unit