



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/151130

PRELIMINARY RECITALS

Pursuant to a petition filed August 02, 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 August 28, 2013, at Milwaukee, Wisconsin.

NOTE: With Petitioner’s permission, her file from case CCO-40/93476 was pulled to examine the procedural history of her appeal of the underlying overpayment.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly instituted a levy action upon Petitioner.

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: Keisha Love, Child Care Subsidy Specialist
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 # ) is a resident of Milwaukee County.

2. On April 9, 2008, the agency sent Petitioner a Child Care Overpayment Notification, claim number [REDACTED], indicating Petitioner was overpaid child care benefits in the amount of \$24,012.60 for the period of July 1, 2007 to July 31, 2008. The notice was sent to an address on [REDACTED] (Exhibit 2, pgs. 1-3)
3. On April 10, 2008, the agency sent Petitioner a second notice of Child Care Overpayment Notification for the same overpayment, to the same address. (DHA file CCO-40/93476)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 1, 2008. In her hearing request, Petitioner listed her address as the [REDACTED] address. (DHA file CCO-40/93476)
5. On May 2, 2008, the agency sent Petitioner a repayment agreement to an address on [REDACTED] (Exhibit 2, pg. 6)
6. On May 16, 2008, the Division of Hearings and Appeals sent Petitioner a letter acknowledging receipt of her appeal and advising her that she would be later notified of the hearing date. In that letter, Petitioner was directed to contact Hearings and Appeals, if she moves. The letter head contained the address, phone number, fax number and e-mail address for Hearings and Appeals. (DHA file CCO-40/93476)
7. Petitioner moved from the [REDACTED] address to an address on [REDACTED] sometime around mid to late May 2008 due to an eviction. (Testimony of Petitioner)
8. There is no indication in the record that Petitioner contacted the Division of Hearings and Appeals to report a change of address. (DHA file CCO-40/93476)
9. On April 23, 2009, the Division of Hearings and Appeals sent Petitioner a hearing notice, advising her that a hearing was scheduled for 5/5/09 at 2:00 p.m. at 1220 West Vliet Street. The notice was sent to the [REDACTED] address. There is no record of the notice being returned to Hearings and Appeals as undeliverable. (DHA file CCO-40/93476)
10. On May 5, 2009, Petitioner did not appear for the hearing and she made no claim of good cause for her failure to appear. Consequently, on May 8, 2009, the Division of Hearings and Appeals dismissed her appeal as abandoned. A copy of the dismissal was sent to Petitioner at the [REDACTED] address. There is no indication that the dismissal was returned to Hearings and Appeals as undeliverable. (DHA file CCO-40/93476)
11. Petitioner did not file a request for rehearing. (Id.; Testimony of Petitioner)
12. On June 2, 2009, July 2, 2009 and August 4, 2009, the agency sent Petitioner dunning notices to remind her that she needed to start repaying the overpayment. The notices were sent to an address on [REDACTED] (Exhibit 2, pgs. 12-14)
13. On September 11, 2009, the agency sent Petitioner a notice that her tax returns would be intercepted to repay her debt. This notice was sent to an address on [REDACTED] (Exhibit 2, pg. 6)
14. On December 2, 2011, the agency sent Petitioner another repayment agreement, because she still had an unpaid balance of \$23,956.95. This notice was sent to an address on [REDACTED] (Exhibit 2, pgs.9-11)
15. On July 28, 2013, the agency sent Petitioner a notice indicating that a levy had been issued upon her property. This notice was sent to an address on [REDACTED] (Exhibit 2, pg. 15)
16. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 2, 2013. (Exhibit 1)

DISCUSSION

The Overpayment

At the hearing, Petitioner wanted to contest the overpayment claim. 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.

Petitioner filed an appeal of the overpayment on May 1, 2008. The Division of Hearings and Appeals scheduled a hearing to address the matter on May 5, 2009. Petitioner did not appear for the hearing. Consequently, her appeal was dismissed as abandoned. The dismissal notice clearly explain that that she had 30 days to request a re-hearing on the matter, pursuant to Wis. Admin. Code §HA 3.10(3). The Petitioner did not file a request for rehearing hearing within thirty days.

Petitioner asserts that she never received the April 23, 2009 hearing notice or any other correspondence from the Division concerning the overpayment determination. Given that Petitioner moved in May 2008 that is possible. However, Petitioner never reported her change of address to the Division of Hearings and Appeals. As such, the Division took correct action in mailing all correspondence to the last address reported by Petitioner.

It should be noted that in the five years that elapsed from the date Petitioner filed her appeal of the overpayment and the date that she filed an appeal of the levy, there is no record of Petitioner contacting the Division of Hearings and Appeals to inquire about her case. Petitioner certainly had the contact information for the Division of Hearings and Appeals, because she received the overpayment notice and filed an appeal. In addition, Petitioner should have received the three dunning notices between June and August 2009 that were sent to the correct address on [REDACTED] as well as the tax intercept notice that was sent in September 2009 to the correct address, but she still did not contact the Division of Hearings and Appeals to inquire about her appeal.

Under such circumstances, it is found that Petitioner's appeal of the overpayment determination is untimely and there is no jurisdiction to address the merits of that issue.

The levy

Wis. Stats. §49.195(3) states that agencies must determine when an overpayment in child care benefits has occurred and that it must, "promptly recover all overpayments".

Wis. Stats. §49.195(3n)(b) states:

If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

The Wisconsin Shares Child Care Manual §2.3.4 states the following:

Recover client overpayments by using a repayment agreement. Negotiate the monthly amount of the repayment with the client.

Negotiate this amount so that the claim will be repaid in equal installments within three (3) years or less. The monthly amount of the repayment agreement for persons in W-2 Trial Jobs may not exceed the monthly subsidy paid to the employer.

All clients for whom an overpayment has been calculated are required to complete and sign a repayment agreement.

Once the repayment agreement has been completed, put the data on BVPA in CARES. CARES will send the client a benefit recovery notice.

In the event of unsuccessful collection efforts and after the 3rd dunning notice, the Department will begin centralized collection efforts. Tax intercept and wage garnishment may be used to obtain repayment of delinquent claims. Repayments for delinquent claims may also be collected through the use of the Department of Revenue (DOR) Tax Offset program.

Emphasis added

Clearly, the agency’s initial efforts to begin collecting the overpayment were unsuccessful. The agency properly sent two repayment agreements and three dunning notices to Petitioner’s correct addresses, but the child care overpayment debt is still outstanding. As such, the agency correctly imposed a levy collection action on July 28, 2013.

CONCLUSIONS OF LAW

The agency correctly imposed a levy collection action on July 28, 2013.

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 28th day of October, 2013.

\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 October 28, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit