



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/153608

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on December 16, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) has correctly implemented a tax intercept.

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: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.
2. On June 21, 2013, the agency issued to the Petitioner a Child Care Overpayment Notification, Claim Number [redacted], indicating that she was overpaid child care benefits in the amount of \$3321.99, for the period of 03/17/13 to 05/31/13. (Exhibit 3, pg. 3)
3. On July 2, 2013, the agency sent to Petitioner a repayment agreement for the \$3321.99 overpayment. (Exhibit 3, pg. 5)

4. The agency sent to Petitioner dunning notices/reminders about the overpayment on August 2, 2013, September 4, 2013, and on October 8, 2013. (Exhibit 3, pgs. 53, 55 and 57)
5. On November 15, 2013, the Public Assistance Collections Unit sent to Petitioner a notice indicating that it would be intercepting her tax refunds to satisfy the \$3321.99 overpayment. (Exhibit 3, pg. 59)
6. No payments have been received towards the overpayment. (Testimony of Ms. Mayer)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 21, 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. 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), Child Day Care Manual Chapter 2, § 2.5.0. A negative action can include the termination of benefits, or the issuance of an overpayment notice.

The Petitioner testified that she timely received the overpayment notice in June 2013, but stated that she did not file an appeal, because she just didn't know what to do. However, the overpayment notice did include appeal instructions.

Petitioner needed to file a request for fair hearing within 45 days of the June 21, 2013 notice. This would put the filing deadline at August 5, 2013. Petitioner did not file any appeal until November 21, 2013. Because the petitioner's appeal was filed more than 45 days after the agency's negative action concerning Child Care Benefits, it is untimely and there is no jurisdiction to address the accuracy of the overpayment determination.

The Tax Intercept

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

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, over-issuance of FS, overpayment of AFDC, and Medical Assistance payments made incorrectly.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(b).

The Wisconsin Shares Child Care Assistance Manual §2.1.6 and §2.1.6.2 describes the collections process used by the Department of Children and Families:

1. An overpayment notice is issued.
2. A repayment agreement is issued. Local Agencies and the Public Assistance Collections Unit can negotiate repayment plan, if the balance of the debt cannot be paid in three years, but the minimum monthly payment must be \$20.00.
3. If the repayment agreement is not returned OR a full payment is missed, a dunning notice is issued.
4. If 3 (three) dunning notices are issued over the life of the debt, the overpayment is referred for further collections actions: levy, warrants/liens and tax interception.

Clearly, the agency sent the Petitioner an overpayment notice and a repayment agreement. The agency properly sent Petitioner three dunning notices to remind Petitioner to make payments towards the child care overpayment. Petitioner did not make any payments toward the debt. As such, the agency correctly notified Petitioner, on November 15, 2013, of its intention to intercept any tax refunds or credits that may become due her.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept.

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 6th day of March, 2014.

\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 March 6, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit