



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/154118

PRELIMINARY RECITALS

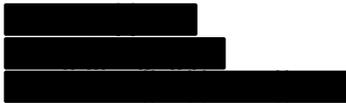
Pursuant to a petition filed December 13, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on January 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration 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: LaReina Horton, 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 May 9, 2012, the agency sent Petitioner a manual Child Care Overpayment Notice indicating that she was overpaid Child Care benefits in the amount of \$444.90 for the period of November 20, 2011 and December 31, 2011. (Exhibit 2)
3. On May 10, 2012, the agency issued an automated Child Care Overpayment Notification, claim number [REDACTED], indicating the same overpayment. (Exhibit 3)
4. On June 4, 2013, the agency sent the Petitioner a Repayment Agreement. (Exhibit 4)
5. The agency sent the Petitioner three dunning notices/reminders about the overpayment on July 3, 2012, August 2, 2012 and September 5, 2012. (Exhibit 5)
6. No payments were made towards the debt. (Testimony of Ms. Horton)
7. On October 12, 2012, the Public Assistance Collections Unit sent Petitioner a notice indicating that any tax refunds she receives, would be intercepted to satisfy the overpayment. (Exhibit 6)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 13, 2013. (Exhibit 1)

DISCUSSION

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(2)(b), provides that the Department of Children and Families shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover under Wis. Stats. §§ 49.161, 49.195(3) and 49.147(6)(cm).

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 hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was October 12, 2012. As such, Petitioner needed to file her appeal by November 12, 2012. Her appeal was not filed until December 13, 2013, well past the appeal deadline. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal.

Petitioner claims that she did not get the October 12, 2012 notice and states that she has a difficult time receiving her mail and that the mailman does not deliver the mail correctly. However, it is undisputed that the notice was sent to the Petitioner at her correct address, the same address she used in filing her appeal. (See Exhibits 1 and 6)

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that

the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.W.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613. The Petitioner has not presented any credible evidence to support her claim that she did not receive the notice. As such it is found that Petitioner timely received the notice of tax intercept.

Even if jurisdiction did exist to hear the merits of Petitioner’s appeal, the record shows that the agency acted correctly.

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.

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 12, 2012, of its intention to intercept any tax refunds or credits that may become due her.

CONCLUSIONS OF LAW

The Petitioner’s appeal is untimely.

THEREFORE, it is

ORDERED

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

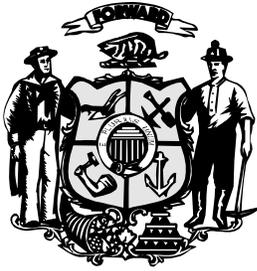
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 24th 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 24, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit