



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/154671

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on February 24, 2014, at Madison, Wisconsin.

The issue for determination is whether this is a timely appeal.

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: Luisa McKy

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner had a prior CC overpayment and had entered into a repayment agreement. She defaulted on that agreement by non-payment after a period of time.

3. The Department issued a tax intercept notice to petitioner on 5/17/13 for the amount of \$2,272 relating to a child care program overpayment in claim number [REDACTED] for the period from 4/8/12 to 6/30/12.
4. The Department sent another tax intercept notice on 12/13/13 relating to a \$47.60 amount. Petitioner provided the front page of this notice.
5. Petitioner filed a request for hearing on January 13, 2014.

DISCUSSION

Wis. Stat. § 49.85, provides that the Department shall, at east annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayments of public assistance. See also, Wis. Stat. § 49.125; Wis. Stat. § 49.195(3); and, 7 U.S.C. § 2022.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Wisconsin Department of Revenue for setoff from his/her state income tax refund, and must inform the person that s/he may appeal the decision by requesting a hearing. Wis. Stat. § 49.85 (4).

Wis. Stat. § 49.85(3)(b) provides that the DWD must give the person whose tax refund is to be intercepted at least 30 days written notice of the impending intercept by sending the required certification notice to his or her last known address. Wis. Stat. § 49.85(3)(b)(2) also requires that the notice issued inform the person subject to the intercept that he or she has *30 days from the date of the notice to appeal the certification action*. Wis. Stat. § 49.85(4)(b), provides for an appeal contesting the certification under Wis. Stat. § 227.44.

Petitioner states that she received the certified mail receipt but never went to get the mail at the post office. But, the agency says this notice was mailed by regular mail. I note that the notice appears to have mailed properly. Given proper mailing, there is a presumption of receipt and the burden falls to petitioner to prove that the mail was not received. The agency states that the notice was never returned an undelivered. I am not persuaded that petitioner did not receive the May 17 notice.

In this case, Petitioner sent in her request for hearing on January 13, 2014. This was not a timely request from the May 17, 2013 notice. It was also not timely from the December 13, 2013 notice as it was received on the 31st day after the date of the notice. But, at the time of the hearing, petitioner conceded her liability for the debt and was only requesting a payment plan. A payment plan is not a function of a DHA hearing and it is something petitioner must work out with the Department. Given that she concedes liability, even if this were a timely appeal, there is no issue for DHA to decide. The Department has authority to issue the tax intercept for unpaid overissuances.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST" Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of April, 2014

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 29, 2014.

Dane County Department of Human Services
Public Assistance Collection Unit