FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[redacted]

DECISION

CTI/155514

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Menominee County Department of Human Services ["County"] in regard to Child Care ["CC"], a Hearing was held via telephone on June 12, 2014. At petitioner's request Hearings scheduled for May 6, 2014 and April 15, 2014 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning petitioner's husband: CTI-155513.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following Wisconsin Works ["W-2"] CC overpayment: Claim Number: [redacted]; April 22, 2012 to November 30, 2012; $9,363.56.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Sue Golding, Family Services Supervisor
Menominee County Department of Human Services
Hwys 47 and 55
PO Box 280
Keshena, WI 54135-0280

OTHER PERSONS PRESENT:
[redacted], Child Care Eligibility
[redacted], Child Care Certifier
[redacted], Child Care Certifier

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Menominee County, Wisconsin.

2. The Wisconsin Department of Children and Families ["DCF"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following W-2 CC overpayment: Claim Number: [redacted]; April 22, 2012 to November 30, 2012; $9,363.56.

3. On July 10, 2013 petitioner had a Hearing concerning the W-2 CC overpayment detailed in *Findings of Fact* #2, above; a *Decision* dated November 8, 2013 was issued upholding the overpayment that is detailed in *Findings of Fact* #2, above. See, DHS Case No. CCO/149726 (Wis. Div. Hearings & Appeals November 8, 2013) (DCF).

4. Petitioner received a written notice entitled "**IMPORTANT NOTICE ABOUT YOUR STATE TAX REFUND AND CREDITS**" (UPPER CASE and **bold** in original) dated February 14, 2014 informing her that her Wisconsin State tax refund would be intercepted and applied toward the overpayment noted in *Findings of Fact* #2.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2011-12).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2011-12).

The Hearing right is described as follows:

> "If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."
>
> Wis. Stat. § 49.85(4) (2011-12).

Petitioner has already had a Hearing concerning the W-2 CC overpayment detailed in *Findings of Fact* #2, above. A *Decision* dated November 8, 2013 was issued upholding the concerning the W-2 CC overpayment detailed in *Findings of Fact* #2, above. See, DHS Case No. CCO/149726 (Wis. Div. Hearings & Appeals November 8, 2013) (DCF). Thus, petitioner may not now contest the merits of those overpayments.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the W-2 CC overpayment claim identified in *Finding of Fact* #2, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount not to exceed $9,363.56 and that amount may be applied against the following W-2 CC overpayment: Claim Number: [redacted]; April 22, 2012 to November 30, 2012; $9,363.56.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED. DCF may certify an amount not to exceed $9,363.56 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2011-12), for purposes of a tax intercept of petitioner to recover an overpayment of W-2 CC.

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 18th day of June, 2014

\sSean P. Maloney
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 June 18, 2014.

Menominee County Department of Human Services
Public Assistance Collection Unit