



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/155977

PRELIMINARY RECITALS

Pursuant to a petition filed March 7, 2014, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to impose a levy to collect a child care overpayment, a hearing was held on April 2, 2014, by telephone.

The issue for determination is whether the agency may utilize a levy to collect the overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tamika Terrell
Milwaukee Early Care Administration
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care assistance in 2011 and 2012. By a notice dated November 8, 2012, the agency informed petitioner that she was overpaid \$9,304.52 in assistance from November, 2011 through September, 2012. Petitioner appealed, and the result of the appeal was that the overpayment was reduced to \$5,536.22.

3. The agency sent a series of “dunning” notices to petitioner in the months after reminding her of the overpayment. Petitioner made no payments on the overpayment.
4. By a notice dated March 1, 2014, the PACU informed petitioner that it would be imposing a levy on her wages and other property to recover the overpayment. Petitioner filed this appeal.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Admin. Code, §DCF 101.23(10)(b) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

Petitioner filed the appeal hoping to have the levy lifted due to extenuating circumstances. She has been off work due to illness and is expecting a baby in May. However, the Division of Hearings and Appeals does not have authority to reverse the action on that basis. The only issues this office can address in a levy appeal are whether there is a mistaken identity and whether the person has made payments. I thus must dismiss petitioner’s appeal because she does not contest either issue.

CONCLUSIONS OF LAW

Petitioner’s appeal of the PACU’s levy is limited to questions of prior payment and mistaken identity, and she has established no basis for remand of the levy.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 7th day of April, 2014

\sBrian C. Schneider
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 April 7, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit