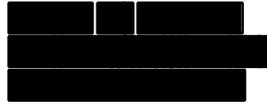




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

WTI/157139

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2014, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a hearing was held on July 1, 2014, by telephone. The hearing record was extended for two days post-hearing for submissions from the parties, which were received.

The issue for determination is whether the petitioner's tax refund interception appeal was timely filed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Andrew Wolstenholme, program coordr.
Wisconsin Works (W-2)
Forward Service Corporation

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is currently a resident of Walworth County.
2. The petitioner received W2 (cash) benefits from at least July 2013 through September 30, 2013.
3. On October 25, 2013, the county agency issued written overpayment notice to the petitioner advising that she had been overpaid \$1,480 in W-2 benefits between July 10, 2013, and September 30, 2013. The notice was sent to her then correct address of [redacted].

██████████; the petitioner received this notice. The notice advises: “If you do not agree with this decision, you have the right to ask for a fact finding review of this decision by the W-2 agency. You must ask for the review within 45 days from the date of this notice ... for information on fact finding reviews, contact your worker listed above.” The petitioner did not file a fact finding review on the topic of her alleged W-2 overpayments.

4. The Department issued dunning letters (signifying nonpayment in the preceding month) to the petitioner at her then correct address of ██████████, ██████████, on December 3, 2013, January 3, 2014, and February 4, 2014. She received these letters.
5. On March 14, 2014, the Department issued a tax refund interception notice to the petitioner at her last known address of ██████████, ██████████. The notice advised that if she wished to appeal the interception, she must file an appeal with this Division “within 30 days of the date of this notice.” The petitioner received this notice.
6. The petitioner did not file a hearing request with this Division until April 23, 2014.

DISCUSSION

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, W-2 benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify a person that it intends to certify an overpayment to the Department of Revenue for setoff from his state income tax refund and must inform the person that he may appeal the decision by requesting a hearing:

(3) NOTICE REQUIREMENTS. ...

(b) At least 30 days before certification of an amount, the department of workforce development shall send a notice to the last-known address of the person from whom that department intends to recover the amount. The notice shall do all of the following:

1. Inform the person that the department of workforce development intends to certify to the department of revenue an amount that the department of workforce development has determined to be due under s.49.125, **49.161 or 49.195(3)**, for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of workforce development to certify the amount by **requesting a hearing under sub. (4) within 30 days after the date of the letter** and inform the person of the manner in which he or she may request a hearing.

(emphasis added)

Wis. Stat. §49.85(3).

The overpayment in question resulted from a type of overpayment listed in §§49.161 and 49.195(3). Therefore, the Department may certify the W-2 payments for interception, and the petitioner has the right to request a hearing to contest that interception with this Division.

The petitioner did not *timely* request a hearing on the proposed interception of her refund to collect the W-2 overpayment. She did not argue that the amount to be intercepted was inconsistent with the

overpayment determination, or that she had not been credited with amounts paid on the overpayment. Instead, she argued that she made verbal requests for a fact finding to the W2 agency in the fall of 2013, and the agency did not provide the fact finding. She submitted telephone records which show that she made calls to the W-2 agency on October 24, 28, and 31, 2013. Of course, the content of those calls is not knowable by this Judge. However, the most salient fact is that *the petitioner did not timely file her tax refund interception appeal with this Division on time*. Without such a timely filing, I cannot reach the merits of the underlying dispute.

The agency's action stands. The Department may utilize tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 49.85.

CONCLUSIONS OF LAW

1. The Petitioner was overpaid W-2 benefits, and did not timely file an appeal of the agency's determination of that overpayment through the fact-finding process.
2. The petitioner did not timely appeal from her state income tax refund interception notice.
3. The Department may certify the sum of \$1,480.00 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition 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 18th day of August, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
WTIuntimely



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 18, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit