



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

PTI/157258

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2014, under Wis. Stat. § 227.42, Wis. Admin. Code §DCF 201.07(1) and Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Department of Children and Families, by the Public Assistance Collection Unit in regard to state income tax intercept certification, a telephonic hearing was held on May 21, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for two weeks for the petitioner to submit by May 26, 2014 reliable evidence to the Department of any additional payments made by her towards the child care provider overpayment, and then the Department's response to DHA by June 4, 2014 regarding review of any evidence submitted by petitioner. Ms. McGee sent a June 3, 2014 letter to DHA and petitioner stating that petitioner has not submitted any documentation of any additional payment to the Department, and thus her outstanding remaining balance to the Department is \$7,101.08.

The issue for determination is whether the Department correctly determined that the petitioner owes a child care provider public assistance debt that was certified for state income tax interception.

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: LaSonia McGee, DCF program integrity supervisor
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who during 2009 operated as the licensee of a family child care provider for [REDACTED] located at [REDACTED].
2. On May 6, 2011, the Department issued a Notice to the petitioner as a child care provider that she had been overpaid child care benefits totaling \$11,698.35 for the period of January 4, 2009 through September 26, 2009, due to the petitioner's failure to keep accurate attendance records, operating in violation of licensing capacity rules, and over-billing the child care program.
3. The petitioner appealed that overpayment to the Division of Hearings and Appeals (DHA) in Case No. [REDACTED]. The hearings took place on October 18, 2011 and November 10, 2011 before ALJ Nancy Gagnon.
4. In her May 16, 2012 decision in [REDACTED] (which was affirmed as final), Judge Gagnon concluded that the Department correctly determined that the petitioner was overpaid a total of \$11,698.35 with a remaining balance due of \$10,067.61.
5. The petitioner did not timely file any rehearing request to DHA, or timely file any appeal to Milwaukee Circuit Court.
6. The petitioner's payments towards the child care provider overpayment are confirmed in Exhibit 3.
7. On April 11, 2014, the Department's Public Assistance Collections Unit sent petitioner a notice to her correct address informing her that it intended to intercept her state income tax refund to recover the remaining provider overpayment amount due of \$10,074.61 arising from the WI Shares overpayment debt. See Exhibit 2.
8. The petitioner received the April 11, 2014 tax intercept notice, and filed an appeal on April 28, 2014 contesting the child care provider tax intercept certification determination.
9. The record was held open for petitioner to submit by May 28, 2014 reliable evidence to the Department of any additional payments made by her towards her child care provider overpayment, and then the Department's response to DHA by June 4, 2014 regarding review of any evidence submitted by petitioner. The petitioner failed to submit any evidence to the Department or DHA. Ms. McGee sent a June 3, 2014 letter to DHA and petitioner stating that petitioner has not submitted any documentation of any additional payment to the Department. See above Preliminary Recitals.
10. The petitioner's outstanding remaining child care overpayment balance to the Department is \$7,101.08.

**DISCUSSION**

Wis. Stat. § 49.85(2)(b), 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 overpayments of care assistance.

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.**

The Department is required to recover all overpayments of public assistance benefits including those made to child care providers. Wis. Stat. § 49.195(3).

In this case, the petitioner had a full prior hearing on the issue of her underlying child care provider overpayment in her prior appeal in Case No. [REDACTED] at DHA on October 18, 2011 and November 10, 2011. See above Findings of Fact. In her May 16, 2012 decision in [REDACTED] (which was affirmed as final on June 20, 2012), Judge Gagnon concluded that the Department correctly determined that the petitioner was overpaid a total of \$11,698.35 with a remaining balance due of \$10,067.61. The petitioner did not timely file any rehearing request to DHA, or timely file any appeal to Milwaukee Circuit Court. As a result, the only remaining issue for this tax intercept hearing is to determine the correct remaining amount of petitioner's provider child care overpayment.

During the May 21, 2014 hearing, the petitioner alleged that she had made an additional payment for which the Department had not given her credit, and was not accurately reflective of her remaining child care overpayment balance. The record was held open for the following deadlines: a) By May 28, 2014, petitioner was to produce to the Department and DHA verifiable proof of an additional payment by her to the Department; and b) By June 4, 2014, Departmental program supervisor, LaSonia McGee agreed to provide a closing argument as to whether the balance due changed or remained the same as stated by the Departmental representative during the May 21, 2014 hearing.

DHA did not receive any new evidence from the petitioner by the May 28, 2014 deadline or even by the date of this decision. In her June 3, 2014 letter to DHA and petitioner, Ms. McGee stated in pertinent part: "Ms. [REDACTED] has not produced documentation of an additional payment. As I testified during the May 21, 2014 PACU hearing, Ms. [REDACTED]'s outstanding balance to the Department is \$7,101.08." Accordingly, based upon the above, I conclude that the Department correctly determined the petitioner was liable for the remaining child care provider overpayment of \$7,101.08, and therefore correctly certified this debt to the Wisconsin Department of Revenue for collection by state tax intercept.

### **CONCLUSIONS OF LAW**

The Department correctly determined the petitioner was liable for the remaining child care provider overpayment of \$7,101.08, and therefore correctly certified this debt to the Wisconsin Department of Revenue for collection by state tax intercept.

**THEREFORE, it is**

**ORDERED**

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 8th day of September, 2014

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\sGary M. Wolkstein  
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 September 8, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit