



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/157356

PRELIMINARY RECITALS

Pursuant to a petition filed May 02, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) agency and the Public Assistance Collection Unit (PACU) of the Wisconsin Department of Workforce Development in regard to a levy issued to collect an overpayment of W-2 benefits, a hearing was held on June 4, 2014, at Milwaukee, Wisconsin. With the parties' consent, the hearing record was held open for seven days additional submissions, which were received.

Per statute, the issues for determination are whether (1) the PACU gave proper credit for payments against the outstanding debt, (2) there is a mistaken identity of the debtor, and (3) the petitioner had a prior opportunity to contest the overpayment, prior to tax refund interception certification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Petrina Gray, Fraud/Recovery Benefit Spec.
UMOS - Wisconsin Works (W-2) agency
2701 S. Chase Ave.
Milwaukee, WI 53207

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. [REDACTED] and the petitioner are biological co-parents of two minor children. Wisconsin Works (W2) benefits totaling at least \$10,793 were paid out under a case headed by [REDACTED] from September 2011 through September 5, 2013. The agency subsequently determined that all of those benefits were overpayments, because the petitioner's earnings put the household over the W2 income limit during those months. On **September 5, 2013**, the UMOS W2 agency issued a *Wisconsin Works (W2) Overpayment Recoupment Notice* to the petitioner (claim numbers # [REDACTED], # [REDACTED], # [REDACTED]), seeking recovery of the \$10,793.00. That Notice was sent to [REDACTED] and was not returned as undelivered. The Notice advised the petitioner to appeal the overpayment determination by requesting a Fact Finding with UMOS within 45 days; neither he nor [REDACTED] did so.
3. The petitioner has reimbursed the state for \$1,360.14 of the W2 overpayment at this time.
4. The Department's PACU sent a Repayment Agreement to the petitioner and [REDACTED] on October 8, 2013, and dunning letters on November 4, December 3, 2013, and January 3, 2014. There was no response. PACU also sent the petitioner a demand for payment on March 5, 2014.
5. Three income tax refund interception notices were issued to the petitioner. All three notices correctly identify the appeal period for contesting a refund interception as 30 days from the interception notice. On **February 14, 2014**, PACU issued an interception notice for \$10,473.00 for the three claims referenced above. On March 14, 2014, PACU issued an interception notice for \$7.00 on claim # [REDACTED]. On April 11, 2014, PACU issued an interception notice for \$24.00 on claim # [REDACTED]. The latter two claims were paid off by the date of this hearing.
6. The PACU issued a *Public Assistance Collection Unit Levy Issued* notice under Wis. Stat. §49.195(3m) in the amount of \$10,504.00 (including charges for issuing and mailing the warrant) on **March 23, 2014**. It was mailed to the petitioner at an address of [REDACTED] Milwaukee, which is the county welfare office. This address was used because [REDACTED] requested that her mailing address to be changed to [REDACTED]. The notice specified that the deadline for appealing the levy was 21 days.
7. [REDACTED] received the levy notice. The petitioner did not receive the levy notice.
8. As of the date of hearing, the outstanding balance on claims # [REDACTED], # [REDACTED], and # [REDACTED] was \$9,143.86, due to commencement of levy recovery.
9. The petitioner does not contest that he is the named debtor against whom the overpayment claim is established. He also offered no evidence to suggest that he has made payments against the overpayment claim that exceeded \$1,360.14 as of June 4, 2014.
10. [REDACTED] testified as to her living address during the overpayment period. Her testimony was not credible. She lived with the petitioner throughout the overpayment period.

DISCUSSION*Levy*

The petitioner seeks to contest a warrant issued during the course of the PACU's attempt to collect a claim for overpaid CC benefits issued from September 2011 through September 5, 2013. The present case is filed under Wis. Stat. §49.195(3s), which allows a debtor to appeal the issuance of the warrant, but limits the appeal "to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor." See Wis. Admin. Code §DCF 101.23(9)(a)5. PACU is allowed to

apply funds obtained via levy, lien or tax intercept against the expenses incurred in filing and serving the levy. *Id.*, (a)3.

The petitioner's appeal from the levy appears to be untimely. However, he did not receive the notice because it was sent to [REDACTED] mailing address, rather than his mailing address. Therefore, the running of the appeal "clock" on the levy issue is tolled, and the merits of the levy issue will be addressed here.

There is no question of mistaken identity in this case; PACU is proceeding against the correct debtor. Further, testimony at the hearing and submitted state records correctly catalogued previous payment against the outstanding debt. There is, therefore, no basis to disturb PACU's warrant.

Interception

The petitioner's hearing request could also be construed as an untimely appeal of his February 14, 2014, tax refund interception notice. Once again, the interception notice was sent to [REDACTED] mailing address, rather than his mailing address. Therefore, the running of the appeal "clock" on the interception issue is tolled, and the interception issue will be addressed here.

The hearing right to challenge an interception 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.*

(emphasis added)

The petitioner has had a prior *opportunity* for hearing on the merits of the overpayment. However, he did not present his overpayment defense previously, because he did not request a Fact Finding on the overpayment determination. The overpayment notice from September 2013 was sent to his correct address. Because he did not avail himself of the Fact Finding process, he has forfeited his right to contest the correctness of the overpayment decision. The only issues remaining in this interception hearing are whether the amount to be intercepted differs from the overpayment amount, or whether the petitioner has not been credited with amounts already paid on the overpayment. As neither of these points was contested, the agency's action stands. The Department may utilize tax refund interception as a means of recovering the overpayment. *See*, Wis. Stats., §49.85.

CONCLUSIONS OF LAW

1. Petitioner's appeal of PACU's warrant is limited to questions of prior payment and mistaken identity, and he has established no basis for the lifting of that warrant.
2. The Department may certify the sum of \$9,143.86 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.

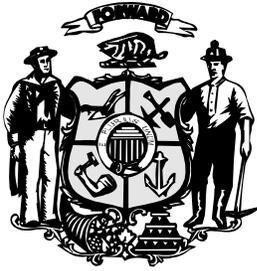
APPEAL TO COURT

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 26th day of August, 2014

\sNancy J. Gagnon
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 August 26, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit