

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner and LB have one child in common, QB.
3. Petitioner was incarcerated in the [REDACTED] from May 2, 2013 – March 2, 2014. The agency was notified of his incarceration on July 18, 2013. Additional agency case comments on November 19, 2013 and February 12, 2014 acknowledge Petitioner's incarceration and indicate the agency updated the living arrangement in the system.
4. On January 21, 2014, the agency issued a Child Care Client Overpayment Notice to Petitioner at the [REDACTED] address informing him that the agency intends to recover an overpayment of child care benefits in the amount of \$553.73 for the period of January 6, 2013 – April 30, 2013. The notice also informs the Petitioner of the right to a hearing by filing a request with the Division of Hearings and Appeals within 45 days of the date of the notice.
5. On February 4, 2014, the agency mailed repayment agreements to the Petitioner at the [REDACTED] address.
6. On February 4, 2014, the agency issued a dunning notice to the Petitioner at the [REDACTED] address.
7. On April 23, 2014, the agency issued a Public Assistance Collection Unit Levy to Petitioner at [REDACTED] address.
8. On May 2, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION***A. Timeliness***

At the time the agency issued the overpayment notice, the agency was aware that the Petitioner was incarcerated. Despite the agency's knowledge of the Petitioner's incarceration, no notice was issued to the Petitioner at the [REDACTED]. The Petitioner had no notice of the overpayment action and no opportunity to request a hearing on the matter within the 45 day deadline. He filed a timely appeal when he learned of the levy. Therefore, I conclude the Petitioner's appeal is timely as to the levy action as well as the overpayment action.

B. Levy

With regard to the issuance of the levy, the Wisconsin Administrative Code, at Wis. Admin. Code, § DCF 101.23 (10) (c), states that:

...

(c) Service of levy and review when property levied.

...

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

...

Wis. Admin. Code, §DCF 101.23(10)(c).

In this case, the Petitioner did not receive the actual notice of the levy. His employer received the notice and informed the Petitioner of it. The Petitioner contacted the agency to find out more about the reason for the levy and was advised that he could file a hearing request. Petitioner filed a timely appeal of the levy.

The agency did not produce evidence that the Petitioner was properly served with the levy, in accordance with the requirements in DCF 101.23(10)(c) to personally serve the levy or serve it by mail with a signature of acceptance. Based on the evidence presented, I conclude the agency did not properly issue the levy.

C. Overpayment

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if s/he needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

Recipients of child care benefits must report changes of circumstances within 10 days, including changes in address, household composition or household income. Child Care Manual, § 1.15.1.

In this case, both the Petitioner and LB testified at the hearing that they lived together at the [REDACTED] address from January, 2013 through the end of April, 2013. On May 2, 2013, the Petitioner was incarcerated.

The agency seeks recovery because LB was not engaged in approved activities at all times when she received child care benefits. The agency produced a report showing the hours that LB was engaged in approved activities during the overpayment period and the hours that child care was used. The Petitioner and LB did not produce any evidence to rebut the agency evidence. Petitioner is liable for the overpayment as an adult who was living in the household at the time of the overpayment.

In summary, I conclude that the Petitioner and LB lived together during the period of January 6, 2013 – April 30, 2013. LB was not engaged in W-2 approved activities at times during the overpayment period when child care benefits were issued. Petitioner was an adult member of the household and is liable for the overpayment.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is timely with regard to the levy and the child care overpayment matter.
2. There was insufficient evidence produced to demonstrate that the levy was properly served on the Petitioner.
3. The agency properly seeks to recover an overissuance of child care benefits in the amount of \$553.73 from the Petitioner for the period of January 6, 2013 – April 30, 2013.

THEREFORE, it is**ORDERED**

1. With regard to the levy, this matter is remanded to the agency to take all administrative steps necessary to rescind its levy action against the Petitioner and return any property taken from the Petitioner pursuant to the levy.
2. With regard to the overpayment of child care benefits, the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of August, 2014

\s\sDebra Bursinger
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 25, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit



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Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit