



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/157564

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Brown County Human Services in regard to Other, a telephone hearing was held on June 5, 2014. A hearing scheduled for May 29, 2014 was rescheduled at petitioner’s request.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Emily Schabow

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Oconto County.
2. Petitioner received child care assistance in 2011 and 2012. By a notice dated November 29, 2013, the county informed petitioner that he was overpaid \$1,061.46 in assistance from September, 2011, through January, 2012. Exhibit 5. Petitioner spoke with the respondent’s fraud

unit in December, 2013, regarding the overpayment, and was supplied with a form to request a fair hearing. Exhibit 7. Petitioner did not appeal at that time.

- 3. The agency sent a series of “dunning” notices to petitioner in the months after notifying him of the overpayment. Exhibit 3.
- 4. By a notice dated April 23, 2014, the PACU informed petitioner that it would be imposing a levy to recover the overpayment. Petitioner filed this appeal on May 13, 2014.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to Child Care benefits) 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. Adm. 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. Adm. 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.” Italics added. 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).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice, and the respondent concedes that he spoke with the respondent regarding this debt on December 12, 2013. His appeal was not filed until May, 13, 2014, just over 5 months later. Once the time limit for appealing is past, the Division of Hearings and Appeals loses its jurisdiction to consider whether the petitioner is liable for an overpayment.

Petitioner did not argue that there was mistaken identity or that he paid the debt. I thus must find that the levy was imposed correctly.

CONCLUSIONS OF LAW

Petitioner’s appeal of the PACU’s levy is limited to questions of prior payment and mistaken identity, and he 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.

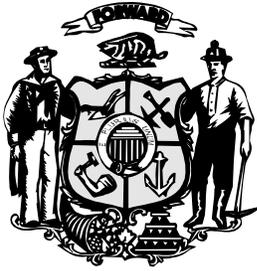
APPEAL TO COURT

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 11th day of September, 2014.

\sPeter McCombs
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 11, 2014.

Brown County Human Services
Public Assistance Collection Unit