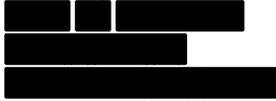




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

WTI/157637

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2014, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a telephone hearing was held on June 10, 2014, at Milwaukee, Wisconsin. A hearing previously scheduled for May 13, 2014, was rescheduled at petitioner's request.

The issue for determination is whether the Department may recover an alleged overpayment of W-2 by intercepting the petitioner's state income tax return.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Bob Klingforth

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. Petitioner resided with her husband until September, 2011, at which time she moved to Antigo. Petitioner has not resided with her estranged husband since September, 2011.
2. Petitioner is not the mother of [redacted], her husband's minor child.

3. Respondent originally sought to recover from petitioner \$5,930.00 in W-2 payments allegedly overpaid to the petitioner's husband from June, 2011, through May of 2012, pursuant to Claim no. [REDACTED]. See, Exhibit 1.
4. Subsequent to receipt of notice of the overpayment, petitioner telephoned the respondent's representative, [REDACTED], Inc. to verbally request a Fact Finding, and submitted documentation in that regard.
5. The Public Assistance Collections Unit notified the petitioner on February 14, 2014, that it may intercept her tax refund to recover \$5,930.00 in incorrectly paid W-2 benefits.
6. Subsequent to petitioner's receipt of the Tax Intercept notice, her legal counsel submitted a second request for a Fact Finding. See, Exhibit 1.
7. While the second Fact Finding request was denied as untimely, [REDACTED], Inc. submitted to the Public Assistance Collections Unit a request to adjust the overpayment in Claim no. [REDACTED] lower to \$4,659.00, and to add petitioner as a liable party to Claim no. [REDACTED], in the amount of \$208.00. See, Exhibit 4.

DISCUSSION

The State must recover all overpayments of public assistance benefits. See 45 C.F.R. § 233.20(a)(13)(I): "Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible.... The State must take all reasonable steps necessary to promptly correct any overpayment." See also Wis. Stats. §§ 49.125(1), 49.195(3) and Wis. Adm. Code, § DCF 101.23(3). Further, at least annually, the Department must certify to the Department of Revenue the amounts it has determined that it may recover because of overpayments of food stamps and W-2 benefits. Wis. Stat. § 49.85. The Department must notify recipients both that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refunds and that the recipients may appeal the decision by requesting a hearing. Wis. Stat. § 49.85(3).

The Department notified the petitioner on February 14, 2014, that it intended to certify her tax refund for interception. That notice properly stated her appeal rights, though the amount of the debt was no longer valid as of the respondent's May 15, 2014, Request for Adjustment. See, Exhibit 4.

The hearing right for an attempted tax intercept is limited by 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 respondent originally sought to recover \$5,930.00 in W-2 payments allegedly overpaid to the petitioner's husband from June, 2011, through May of 2012, pursuant to Claim no. [REDACTED], and as identified in correspondence to the petitioner on September 17, 2013. Petitioner testified that she immediately telephoned to request a Fact Finding, and submitted documentation to the respondent's representative, [REDACTED], Inc. When petitioner received a Tax Intercept notice several months later, her legal counsel submitted a second request for a Fact Finding. While the Fact Finding request was denied as untimely, [REDACTED], Inc. submitted a request to adjust the alleged overpayment in Claim no. [REDACTED] lower to \$4,659.00, and to add petitioner as a liable party to Claim no. [REDACTED], in the amount of \$208.00. Petitioner credibly testified at hearing that she timely requested a fact finding in a telephone conversation with a representative of [REDACTED]. This testimony was not specifically refuted by

the respondent. As such, I will exercise my discretion and allow the petitioner to appeal the underlying overpayment claims.

On March 20, 2013, petitioner's husband was denied for W-2. That notice explained that he was not eligible since "[t]he child who might make you eligible is not living in your household. You cannot receive Wisconsin Works because no one in the case has legal custody of a minor child who is in the household." Exhibit 5.

Underlying all of this are two significant facts: first, the petitioner did not live with her husband subsequent to September of 2011; second, petitioner is not the mother of her husband's minor child. The petitioner testified that she left her husband in September of 2011, due to domestic violence, and has not lived with him since. Petitioner explained that she lived with her brother for approximately one year after she left her husband, and thereafter lived in an apartment in Antigo, Wisconsin, for one year before relocating to Milwaukee, Wisconsin, in September of 2013. She stated that she was not aware that he applied for W-2 benefits, Emergency Assistance, or FoodShare benefits after she moved.

The respondent's representatives' testimony indicated that petitioner was added to her husband's case pursuant to a request by her husband in a September, 2011, change report. Petitioner was added as a liable party due to a finding that she and her husband have a child in common. The respondent's representatives testified that the misrepresentation of a minor child in the home was the basis for the overpayment. However, the petitioner testified that she was not the mother of said minor child, nor did she have custody of the minor child. On cross examination, the respondent conceded that it did not know if petitioner was, in fact, the minor child's mother. The respondent's representative testified that, from a W-2 standpoint, petitioner would not be liable if she was not the child's mother. The respondent's representative further testified that he had never initiated the overpayment claim against the petitioner; the computer system identified her as the mother of the child and automatically added her as a liable individual.

W-2 policy specifies that,

W-2 agencies should seek recovery and establish liability for overpayments only from adult members of the W-2 Group. The adult member must have been an adult member of the W-2 group at the time the overpayment occurred.

The respondent has not established that the petitioner was an adult member of the W-2 group at the time of the overpayment. The only information upon which it appears to have based this assertion was provided by petitioner's estranged husband who, notably, did not testify at hearing. Therefore, I conclude that petitioner cannot be liable for the overpayment.

CONCLUSIONS OF LAW

1. The respondent has not established that petitioner was an adult member of the W-2 group at the time of the overpayment.
2. The petitioner is not liable for W-2 Overpayment Claim nos. [REDACTED] and [REDACTED].

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that within 10 days of the date of this decision it rescind petitioner's liability for W-2 Overpayment Claim nos. [REDACTED] and [REDACTED], and cease any and all collection efforts pertaining to petitioner.

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 27th day of June, 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 June 27, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit
Attorney Patricia DeLessio