

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/157872

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Public Assistance Collections Unit in regard to Child Care, a telephonic hearing was held on June 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner’s appeal of her May 14, 2004 child care tax intercept is timely for jurisdictional purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

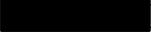
Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love, child care specialist
Milwaukee Enrollment Services
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 # ) is a resident of Milwaukee County who received child care benefits for her children during the period of April, 2002 through August 31, 2002.
2. Milwaukee Enrollment Services (MES) sent a February 13, 2003 Child Care Overissuance Notice to the petitioner at her correct address informing her that she had been overissued \$6,729.16 of

child care benefits during the period of April 28, 2002 to August 31, 2002, due to client error (petitioner not employed, nor in assigned W-2 activities, yet continued to received child care benefits). That notice stated that petitioner had 45 days to file any appeal of the February 13, 2003 child care overpayment notice.

3. The petitioner filed a timely appeal of the child care overpayment with the Division of Hearings and Appeals (DHA), but failed to appear for her hearing. Petitioner's appeal was dismissed as abandoned. Petitioner's request for a rehearing was denied, and petitioner failed to file any timely appeal to circuit court.
4. MES sent Dunning notices to the petitioner at her correct address of record.
5. The Department sent a May 14, **2004** Child Care Tax Intercept Notice to the petitioner at her correct address indicating that her remaining child care overpayment of \$6,258.16 would be intercepted from her tax refunds. That May 14, 2004 Notice stated that the remaining \$6,258.16 child care overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. See Exhibit 1. The petitioner failed to file an appeal with DHA within 30 days of the May 14, 2004 Child Care Tax Intercept Notice, and that notice was not returned as undeliverable. See Exhibit 1.
6. MES has been recovering from petitioner her child care overpayments by tax intercepts since 2011.
7. The petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) on the Child Care Tax Intercept issue which was date stamped by the post office on May 22, 2014 and was received at DHA on May 27, 2014..
8. As of the June 25, 2014 hearing, the remaining Child Care overpayment amount was \$682.36

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC, child care, and medical assistance payments made incorrectly. The department 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 § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept must be filed within 30 days of the date of the notice of the tax intercept pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on May 22, 2014 which is **more than ten (10) years** after the date of the May 14, 2004 Child Care tax intercept notice.

The petitioner filed a timely appeal of the child care overpayment with the Division of Hearings and Appeals (DHA), but failed to appear for her hearing. Petitioner's appeal was dismissed as abandoned. Petitioner's request for a rehearing was denied, and petitioner failed to file any timely appeal to circuit court.

During the June 25, 2014 hearing, the petitioner did not dispute that she had received the child care overpayment notice or the May 14, 2004 tax intercept notice. The MES representative testified that neither the May 14, 2004 tax intercept notice nor any of the other child care overpayment notices sent to the petitioner were returned to the county agency or MES as undeliverable. The petitioner was unable to provide any good cause for her failure to file her tax intercept appeal until May 22, 2014.

The Department of Workforce Development 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).

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.*

(Emphasis Added).

The petitioner had the prior *opportunity* for a hearing on the merits of the underlying child care overpayments, as explained in Finding of Fact #3 above. As a result, the only issues which petitioner could have been contested even if her tax intercept appeal had been timely in this interception hearing would have been: 1) whether the amount to be intercepted differs from the overpayment amount, or 2) whether the petitioner has not been credited with amounts already paid on the overpayment. The petitioner was unable to refute that the remaining amount of the Child Care tax intercept amount was \$682.36 as of the June 25, 2014 hearing date. As neither of these points was contested by the petitioner, MES's action stands. The Department may utilize tax refund interception as a means of recovering the overpayment. See, Wis. Stats. §49.85.

The determination by Milwaukee Enrollment Services that the petitioner was overpaid is affirmed. The Department is required to 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. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive...), Wis. Stat. § 49.125(1). As stated previously, the Department may utilize tax refund interception as a means of recovering the overpayment. See, Wis. Stat. § 49.85.

CONCLUSIONS OF LAW

1. There is no jurisdiction regarding the issue of whether Milwaukee Enrollment Services (MES) correctly imposed a May 14, 2004 Child Care tax intercept against the petitioner's taxes, as the appeal is untimely.
2. The remaining amount of petitioner's child care overpayment was \$682.36 as of the June 25, 2014 hearing date.

3. The Department may certify the full sum of \$682.36 as the remaining Child Care overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund.

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

\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