



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/158141

PRELIMINARY RECITALS

Pursuant to a petition filed June 06, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on August 12, 2014, at Milwaukee, Wisconsin. On June 6, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals. A hearing was scheduled for July 9, 2014. The Petitioner did not appear on July 9, 2014 but did appear at the agency on July 10, 2014. The Petitioner requested a re-hearing on July 14, 2014. The rehearing request was granted on July 24, 2014.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a Levy against the Petitioner.

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: Tameika Terrell

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On August 24, 2012, the agency issued Child Care Overpayment Notices to the Petitioner and to his wife TS at his [REDACTED] address. The notices informed the Petitioner and TS that the agency intends to recover an overissuance of child care benefits in the amount of \$7,235.56 for the period of August 23, 2009 – February 28, 2010 for failure to report accurate household composition. The notices also informed the Petitioner and TS of the right to a hearing on the overpayment by filing a request for a hearing with the Division of Hearings and Appeals within 45 days of the date of the notice.
3. On September 5, 2012, repayment agreements were mailed to the Petitioner and TS at the [REDACTED] address. On October 2, 2012, November 2, 2012 and February 4, 2013, dunning notices were issued to the Petitioner and to TS at the [REDACTED] address.
4. TS filed an appeal of the overpayment on November 16, 2012. TS failed to appear for the hearing scheduled on January 22, 2013. TS' appeal was dismissed as abandoned.
5. On May 23, 2014, the agency issued a Public Assistance Collection Unit Levy to the Petitioner at his address on [REDACTED]. It informed him that the agency issued a levy for unpaid public assistance debt. It further informed him of the right to request a hearing regarding the levy by filing an appeal within 21 days from the date of the notice.
6. On May 23, 2014, the agency attempted to garnish the Petitioner's wages. The agency did intercept a total of \$973.39 from TS. The outstanding balance of the debt is \$6,262.17.
7. On June 6, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals. A hearing was scheduled for July 9, 2014. The Petitioner did not appear on July 9, 2014 but did appear at the agency on July 10, 2014. The Petitioner requested a re-hearing on July 14, 2014. The rehearing request was granted on July 24, 2014.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3). The 2012 notices of child care overissuance were sent to the correct address and contain appeal instructions, noting the appeal deadline to be 45 days. No appeal was filed by the Petitioner until June 6, 2014. TS filed a timely appeal of the overpayment in November, 2012. The Petitioner testified that TS gathered and sorted all of their mail and he never saw the notices. TS did not appear at the hearing. Without additional evidence, I must conclude that the notices were properly delivered to the Petitioner at his correct address. Thus this appeal is untimely as to the 2012 notice of child care overissuance.

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a levy, i.e., whether the department is proceeding against the correct individual and whether there have been prior payments of the debt, the appeal must be timely. In this case, the Petitioner filed a timely appeal of the levy.

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to W-2 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. Wis. Admin. Code, § 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).

There is no question this case as to the identity of the debtor. Further, the Petitioner raised no issue in this case as to the amount of the outstanding debt. Therefore, I conclude the agency properly issued a levy against the Petitioner.

### **CONCLUSIONS OF LAW**

1. The Petitioner's appeal is untimely as to the child care overpayment.
2. The Petitioner's appeal is timely as to the levy.
3. The agency properly issued a levy against the Petitioner for the balance of the unpaid child care overpayment debt because there is no issue as to the identity of the debtor and no issue as to the amount of the outstanding debt.

**THEREFORE, it is**

**ORDERED**

That 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 28th day of August, 2014

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\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 28, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit