



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/158772

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 01, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on October 01, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly issued the tax intercept.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Glenetta Rucker

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

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency issued a notice of child care overpayment on 1/31/14 in the amount of 1,172.63.
3. The agency issued another notice on 2/4/14 indicating the same.

4. The agency issued a repayment agreement on 2/4/14.
5. The agency issued Dunning notices on 3/4/14, 4/2/14, and 5/2/14.
6. The agency issued a tax intercept notice on 6/13/14.
7. Petitioner appealed.

### DISCUSSION

Wis. Stat., §49.195(3), provides that the agency must determine if a childcare overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. The Department may utilize tax intercept as a means of recovering the overpayment. Wis. Stat., §46.85.

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of W-2 benefits (including child care), food stamps, Aid to Families with Dependent Children (AFDC), and Medical Assistance.

The Department of Workforce Development must notify the person that it intends to certify overpayments 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 a prior opportunity for a hearing on the merits of the child care overpayment. She stated that she thought she had requested a hearing after getting the overpayment notices. She concedes that she is the subject of the tax intercept and that she has not paid back the debt. The tax intercept notice was issued properly. It is unfortunate that petitioner did not properly exercise her hearing rights on the merits of the overpayment months ago, but this is not the time to revive those rights.

### CONCLUSIONS OF LAW

The tax intercept notice was issued correctly.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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 4th day of November, 2014

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\sJohn P. Tedesco  
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 November 4, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit