



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/159139

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 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 August 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed and if so, whether MECA took appropriate steps to institute a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



COA

Respondent:

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

By: Keisha Love, Child Care Subsidy Specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On February 13, 2014, MECA sent the Petitioner a manual Child Care Client Overpayment Notice, indicating that she had been overpaid \$989.57 in benefits for the period of July 7, 2013 to August 31, 2013. This notice included an overpayment worksheet. (Exhibit 4, pgs. 1 and 2)
3. On February 14, 2014, MECA sent the Petitioner an automated Child Care Overpayment Notification, claim number [REDACTED], advising her of the same overpayment. (Exhibit 4, pgs. 3-4)
4. Petitioner received at least one of the overpayment notices and contacted Ms. Love. (Testimony of Petitioner)
5. On March 4, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a Repayment Agreement. (Exhibit 4, pgs. 8-10)
6. PACU sent the Petitioner three dunning notices / reminders about the debt on April 2, 2014, May 2, 2014 and June 3, 2014. (Exhibit 4, pgs. 5-7)
7. On July 11, 2014, PACU sent the Petitioner a notice advising her it would be intercepting any State tax refunds to which she might be entitled, to satisfy the child care overpayment. (Exhibit 4, pgs. 17 and 18)
8. The notices and dunning letters were sent to the correct address. (Testimony of Petitioner)
9. Petitioner has made no payments towards the overpayment. (Testimony of the Petitioner)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 21, 2014.

DISCUSSION

Wis. Stats. §49.195(3) states that county agencies must determine when an overpayment in child care benefits has occurred and that it must, “promptly recover all overpayments”.

The Wisconsin Shares Child Care Assistance Manual §2.1.6 and §2.1.6.2 describes the collections process used by the Department of Children and Families:

1. An overpayment notice is issued.
2. A repayment agreement is issued. Local Agencies and the Public Assistance Collections Unit can negotiate repayment plan, if the balance of the debt cannot be paid in three years, but the minimum monthly payment must be \$20.00.
3. If the repayment agreement is not returned OR a full payment is missed, a dunning notice is issued.
4. If 3 (three) dunning notices are issued over the life of the debt, the overpayment is referred for further collections actions: levy, warrants/liens and tax interception.

Wis. Stat., §49.85(2)(b), provides that the Department of Children and Families shall, at least annually, certify to the Department of Revenue the amounts that it has determined it may recover under Wis. Stats. §§ 49.161, 49.195(3) and 49.147(6)(cm).

The Department of Children and Families 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)(b).

The agency sent the Petitioner an overpayment notice and a repayment agreement. The agency properly sent Petitioner three dunning notices to remind Petitioner to make payments towards the child care overpayment. Petitioner did not make any payments toward the debt. As such, the agency correctly notified Petitioner, on July 11, 2014, of its intention to intercept any State tax refunds or credits that may become due her.

At the hearing, the Petitioner indicated that she wanted to dispute the underlying overpayment. However, a hearing officer 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 concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application, the reduction of benefits, or the recoupment of an overpayment.

In the case at hand, the date of action was February 14, 2014, the date the agency issued the automated overpayment notice. 45-days from February 14, 2014, fell on March 31, 2014. Petitioner filed her appeal on July 21, 2014, 158 days after the date of negative action concerning Child Care Benefits. Consequently, her appeal of the underlying overpayment is untimely.

Petitioner argues that her appeal should be considered timely filed because she tried faxing over an appeal in March and again in April/May 2014.

Ms. Love testified that she did speak to Petitioner on April 1, 2014, because the Petitioner had called to see if they had received her request for a hearing. Ms. Love testified that she told the Petitioner that the agency had not received her appeal and that she provided the Petitioner with the phone number for the Division of Hearings and Appeals.

The Petitioner testified that she faxed the appeal to the Division of Hearings and Appeals sometime in April or May 2014, but she did not keep a copy of her appeal letter, nor did she follow up her letter with a phone call, when she did not hear back from the Division of Hearings and Appeals.

Wis. Admin. Code HA 3.05(3)(c), which states:

A hearing request shall be considered filed on the date of actual receipt by the division or agency, or the date of the post-mark, whichever is earlier. A request filed by facsimile is complete upon transmission. If the request is filed by facsimile transmission and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

Petitioner's appeal was not received by either the Division of Hearings and Appeals by the March 31, 2014 deadline, because she used the wrong fax number. As such, it is still untimely.

CONCLUSIONS OF LAW

1. PACU correctly instituted a tax intercept.
2. Petitioner's appeal of the underlying overpayment is untimely.

THEREFORE, it is

ORDERED

That the petition 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

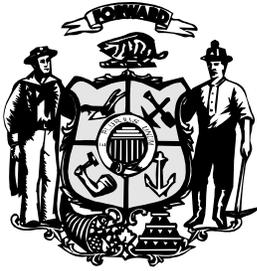
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 21st day of October, 2014.

\sMayumi M. Ishii
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 October 21, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit