



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/159141

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 to intercept the petitioner's income tax refund and apply it against a prior overpayment of W-2 Childcare (CC) benefits, a hearing was held on August 13, 2014, at Milwaukee, Wisconsin.

The issues for determination are (1) whether this Administrative Law Judge (ALJ) has jurisdiction to consider the merits of the petitioner's appeal, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of \$78,199.32 in CC benefits.

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On *April 15, 2011*, the Department issued a written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$78,199.32 in alleged CC overpayments (claims plus fees). The notice advised the petitioner to file an appeal, if desired, within 30 days of the notice date. The notice was mailed to the last address supplied to the Department by the petitioner. See Exhibit 8. The petitioner appealed from the interception letter in July 2014.
1. On October 22, 2010, the Department issued a *Child Care Overpayment Notice* to the petitioner advising that she had been overpaid \$78,192.87 in childcare benefits for the February 2009 through August 2010, period (claims # [REDACTED], # [REDACTED]). Despite receiving this notice, the petitioner did not file a fair hearing request to challenge that overpayment.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). The petitioner received such W-2 childcare funding for a period of time in 2009 – August 2010. In October 2010, the county agency determined that she had been overpaid childcare benefits, and notified her of the same. When the petitioner did not begin repaying the alleged overpayment, the agency referred her case to the Department of Revenue for collection via tax refund interception. The petitioner appealed in an effort to contest the interception.

Wis. Stat. § 49.85, provides that the Department of Workforce Development shall, at least annually, certify to the Department of Revenue the amounts to be recovered as a result of overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or W-2 payments made incorrectly.

The Department of Workforce Development must notify a person that it intends to certify an 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:

(3) NOTICE REQUIREMENTS. ...

(b) At least 30 days before certification of an amount, the department of workforce development shall send a notice to the last-known address of the person from whom that department intends to recover the amount. The notice shall do all of the following:

1. Inform the person that the department of workforce development intends to certify to the department of revenue an amount that the department of workforce development has determined to be due under s.49.125, 49.161 or **49.195(3)**, for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of workforce development to certify the amount by **requesting a hearing under sub. (4) within 30 days after the date of the letter** and inform the person of the manner in which he or she may request a hearing.

(emphasis added)

Wis. Stat. §49.85(3).

The overpayment in question resulted from a type of overpayment listed in §49.195(3). Because the petitioner did not file her appeal from the April 2011 interception notice until July 2014 (more than the statutory 30 days), I have no jurisdiction to consider the merits of her appeal. Thus, the agency’s action stands.

CONCLUSIONS OF LAW

1. Because the petitioner failed to timely appeal from her April 2011 tax refund interception notice, this ALJ lacks jurisdiction to consider the merits of her appeal. Therefore, the agency’s action stands.

THEREFORE, it is **ORDERED**

That the petition 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 13th day of August, 2014

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 13, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit