



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

PTI/160085

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2014, under Wis. Stat. § 227.42, Wis. Admin. Code §DCF 201.07(1) and Wis. Stat. § 49.85(4), to review a decision by the Kenosha County Human Service Department in regard to a 2012 tax intercept, a hearing was held on September 30, 2014, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's appeal of the agency's tax intercept is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted names and addresses of petitioners]

Respondent:

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

By: Karen Mayer
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Kenosha County.
2. On March 21, 2011 the agency sent Petitioner a notice of over payment.

3. On June 16, 2011 Petitioner filed an appeal of the overpayment. A hearing was held, and ALJ Marina Croft dismissed Petitioner's appeal as untimely.
4. On July 13, 2012 the agency sent Petitioner notice of a tax intercept. Prior to sending that notice the agency sent three dunning notices and a repayment agreement. On August 22, 2014 the Division of Hearings and Appeals received Petitioner's appeal of the tax intercept.

DISCUSSION

The overpayment rules require the agency to recover overpayments, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. In this case the original notice regarding the underlying overpayment was sent on March 21, 2011. Petitioner had until April 20, 2011 to request a hearing. Petitioner did not request a hearing until June 16, 2011. On September 8, 2011 a hearing was held in front of ALJ Marina Croft. ALJ later issued a decision dismissing the case because it was untimely.

During this hearing, Petitioner wanted to lower the amount of the overpayment. At a hearing concerning the use of a tax intercept to collect a Child Care overpayment, appeal of the determination of underlying overpayment is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; In this case, the date of the notice was July 13, 2012. The Division of Hearings and Appeals received the petitioner's request for fair hearing on August 22, 2014. This is over one and a half years past the 30 day window for appeal. A hearing officer can only hear cases on the merits if he or she has jurisdiction to do so. There is no jurisdiction if the hearing request is untimely. In this case, I am without jurisdiction because Petitioner's appeal of the tax intercept is timely. I note that even if Petitioner's request was timely, and I had jurisdiction to decide the case on the merits, the agency issued all of the appropriate notices to implement the tax intercept.

CONCLUSIONS OF LAW

Petitioner's did not file her appeal timely.

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 3rd day of October, 2014

\sCorinne Balter
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 3, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit