



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

CTI/160183

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on October 15, 2014, at Madison, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect the overpayment of childcare payments for the period from November 3, 2013 to March 31, 2014 in the remaining amount of \$9,791.04.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Megan Thurston, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Dane County who resides in a household with her three children.
2. The petitioner received childcare assistance benefits from November 3, 2013 to March 31, 2014.

3. The county agency paid childcare payments to petitioner's child care provider for petitioner's three children for the period from November 3, 2013 to March 31, 2014.
4. The petitioner was incarcerated as of July 1, 2013, but was in the jail "CAMP" Program from July 2, 2013 until October 28, 2013. On October 28, 2013, petitioner's participation in the CAMP program was revoked due to program violation, and petitioner continued to be incarcerated until March 31, 2014.
5. In the CAMP program, petitioner was eligible for child care benefits for her children, but once that program was revoked petitioner was no longer eligible for CC because she was not "living" at home but was "living" at the jail. See Exhibit 5.
6. The county agency sent March 17, 2014 and April 24, 2014 Child Care Overpayment Notices to the petitioner at her correct address stating that she received a total of \$9,791.04 in childcare overpayments during the period from November 3, 2013 to March 31, 2014, due to not being in a child care approved activity or timely reporting change in household composition (petitioner incarcerated), and thus was ineligible for child care benefits.
7. During the October 15, 2014 hearing, petitioner admitted that she received the March 17, 2014 and April 24, 2014 Child Care Overpayment notices.
8. The petitioner failed to timely file any appeal to the Division of Hearings and Appeals (DHA) regarding the March 17, 2014 or April 24, 2014 Child Care overpayment notices, as indicated in Findings of Fact #7 above.
9. The county agency sent Dunning notices to the petitioner on May 2, 2014, June 3, 2014, and July 14, 2014.
10. The Department sent an August 15, 2014 child care tax intercept notice to the petitioner informing her that it intended to intercept her state tax refunds to recover the remaining \$9,791.04 child care overpayment for the period from November 3, 2013 to March 31, 2014. That notice stated any appeal must be filed within 30 days of the date of that notice.
11. The petitioner timely appealed that tax intercept notice to the Division of Hearings and Appeals (DHA).

### 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 March 17, 2014 and April 24, 2014 child care overpayments in the total amount of \$9,791.04 for the period of November 3, 2013 to March 31, 2014. The petitioner admitted that she failed to file any appeal to DHA regarding the March 17, 2014 or April 24, 2014 child care overpayment notices. The petitioner also admitted that she received those overpayment notices.

The only issues remaining in this interception hearing are whether the amount to be intercepted differs from the overpayment amount, or whether the petitioner has not been credited with amounts already paid on the overpayment. The petitioner questioned a \$7 charge which is included in the total \$9,791.04 tax intercept amount. The department established that the \$7 charge was a legitimate claims collection fees which included certified mailing cost to the petitioner. Based upon the evidence in the hearing record, the agency's action stands. The Department may utilize tax refund interception as a means of recovering the overpayment. See Wis. Stats. §49.85.

The Department is required to recover all overpayments of public assistance benefits. See 45 C.F.R. § 233.20(a)(13)(I) (...Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible....The State must take all reasonable steps necessary to promptly correct any overpayment.). See Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) ("...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). As stated previously, the Department may utilize tax refund interception as a means of recovering the overpayment. See Wis. Stat. § 49.85.

### CONCLUSIONS OF LAW

1. The notice of the intent to intercept petitioner's income tax refund does not provide a new opportunity for a hearing on the merits of the underlying child care overpayment claim.
2. The remaining amount of petitioner's child care overpayment as of October 15, 2014 was \$9,791.04.
3. The Department may certify the sum of \$9,791.04 was an amount due as of October 15, 2014, and may proceed with the action to intercept the petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 12th day of December, 2014

---

\sGary M. Wolkstein  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 12, 2014.

Dane County Department of Human Services  
Public Assistance Collection Unit