



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

CTI/160493

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Portage County Department of Human Services in regard to collection of a Child Care overpayment, a hearing was held on October 28, 2014, at Stevens Point, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect a child care overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Mandy Mayek

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Portage County.
2. In April, 2014, the county agency informed petitioner that she was overpaid \$3,780.00 in child care assistance, claim no. Redacted. Three "dunning" notices were sent. By a notice dated

August 15, 2014, the PACU informed petitioner that it intended to intercept her state tax refunds to recover the overpayment. Petitioner did not appeal the overpayment.

3. Petitioner timely appealed from the respondent's tax intercept notice.

DISCUSSION

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. See, specifically, Wis. Stat., §§49.195(3), 49.155. 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 general relief benefits, foodshare, W-2 benefits including child care, and Medical Assistance. The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

The Department 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. After the client is notified about the overpayments, she is given an opportunity to agree to a repayment schedule. If that is not done, the agency will send up to three dunning notices requesting cooperation in repayment. If there still is no agreement, the case is referred to the PACU's central recovery unit. Among the recovery actions that unit will take are liens, levies, and tax intercepts.

Petitioner testified that she has paid at least \$100.00 toward the outstanding balance within the last 6 weeks preceding hearing. Additionally, the petitioner's wages are presently being garnished to collect this debt. The petitioner argues that this has been financially ruinous for her family, and that she filed this appeal to seek a repayment agreement that would be at least manageable.

The respondent confirmed that petitioner's wage garnishments have been received as a result of a levy, and the most current balance is \$3,411.84. Unfortunately, once the matter is sent to central collection as being delinquent, the PACU may utilize any and all methods available to recover the claim. See, Wis. Adm. Code, § DCF 101.23(4). Had petitioner made an agreement to repay prior to August, 2014 and stuck with the payment schedule, no tax intercept would have been instituted. The tax intercept process has started, and the petitioner has not established any error on the part of the respondent that would serve as a legal basis for stopping it. While I would certainly urge the respondent to work with the petitioner on an affordable payment plan, I am constrained to apply the law as written. I thus must conclude that the PACU correctly utilized the tax intercept despite petitioner making payments through wage garnishment.

CONCLUSIONS OF LAW

The PACU is allowed to utilize a tax intercept to recover an overpayment despite petitioner's payment on the overpayment through wage garnishment.

THEREFORE, it is

ORDERED

That 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 22nd day of December, 2014.

\sPeter McCombs
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 December 22, 2014.

Portage County Department of Human Services
Public Assistance Collection Unit