



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/160673

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Fond Du Lac County Department of Social Services in regard to Child Care, a hearing was held on October 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to hear this case when Petitioner's notice of tax intercept was mailed November 13, 2009, and Petitioner has filed two previous appeals, which she abandoned.

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: Attorney Nancy Wettersten
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On November 13, 2009 the Public Assistance Collection Unit (PACU) mailed a Notice of Tax Interception to Petitioner.

3. On December 29, 2010 the Division of Hearings and Appeals dismissed a previous appeal Petitioner requested on this same issue when she failed to appear for the hearing. That decision was in writing, and was mailed to the address Petitioner provided to the Division of Hearings and Appeals.
4. On October 3, 2013 the Division of Hearings and Appeals dismissed a second appeal Petitioner filed on this same issue when Petitioner again failed to appear for the hearing. Again that decision was in writing, and mailed to the address Petitioner provided to the Division of Hearings and Appeals.
5. On September 18, 2014 Petitioner filed a third appeal on the tax intercept. In filing this appeal her intention was to address the underlying overpayment that occurred prior to tax intercept. This is the same issue she sought to appeal in her two previous appeals with the Division of Hearings and Appeals. The tax intercept occurred in 2009 and this overpayment happened before then. The Division of Hearings and Appeals received this request on September 18, 2014.

DISCUSSION

The Division of Hearings and Appeals has the authority to hear cases pursuant to the Chapter HA 3 of the Administrative Code. (may be viewed online at https://docs.legis.wisconsin.gov/code/admin_code/ha/3 last viewed October 2014). The Division of Hearings and Appeals only has the limited authority to hear very specific cases on very specific issues as discussed in Wis. Admin. Code §§ HA 3.01 and 3.03. In addition, 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.

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. 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.*

Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Id.*

The Division of Hearings and Appeals does not have jurisdiction to hear an appeal on the tax intercept issue for the two reasons. First the appeal is untimely. The tax intercept notice was sent to Petitioner on November 13, 2009. She had 30 days from that date to file an appeal. It is nearly five years later. Second the Division of Hearings and Appeals does not have jurisdiction because Petitioner appealed this exact same case with the exact same issues and parties two previous times. Both of those appeals were set for hearing, and Petitioner was mailed a notice of the date, time, and location of the hearing. Petitioner failed to appear at those hearings, and those appeals were dismissed. A written decision dismissing those appeals was mailed to Petitioner. Petitioner never requested a rehearing in either of those cases.

At the hearing Petitioner states that she did not receive the hearing notices or written decisions because she frequently moved. She also states that she did not receive previous notices from the Department. I do not find these statements to be credible. It is Petitioner's responsibility to update the Division of Hearings and Appeals and the Department when she moves. In addition, had she forwarded her mail, she would have received these notices. Petitioner could have also contacted the Division of Hearings and Appeals if she had

not received anything after she filed an appeal. If Petitioner chooses not to update her address with the state agencies, not to forward her mail, and not to inquire with the Division of Hearings and Appeals after filing an appeal, there is no good cause, and I am without jurisdiction to revisit an issue already twice appealed.

Ultimately Petitioner seeks to address the underlying overpayment from before 2009. That is also untimely. An appeal of a tax intercept does not allow a person to address the underlying overpayment. Petitioner had an opportunity to appeal the underlying overpayment when the overpayment occurred prior to 2009.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction to hear the appeal on the tax intercept case when Petitioner's notice of tax intercept was mailed November 13, 2009, and Petitioner has filed two previous appeals, which she abandoned.

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.

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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 14th 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 14, 2014.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit