



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WTI/160728

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 2014, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept the petitioner's income tax refund to recover a Wisconsin Works (W-2) overpayment, a hearing was held on October 14, 2014, by telephone.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect a W-2 overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: MacArthur Strawder
Maximus
4201 N. 27th Street, 4th Floor
Milwaukee, WI 53216

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. By a notice dated August 15, 2012, petitioner's W-2 agency informed her that she was overpaid \$1,257 in W-2 payments between March 13 and July 31, 2012, because she failed to report earned income, claim no. [REDACTED]. Petitioner received the notice.

3. The agency sent a repayment agreement on September 5, 2012, and then three “dunning” notices on October 2, November 2, and December 4, 2012. On January 11, 2013, the PACU notified petitioner that it intended to intercept her state tax refunds to recover the overpayment.
4. There is no record that petitioner responded to any of the notices. She did not file an appeal with the Division of Hearings and Appeals until she filed this appeal on September 20, 2014.

DISCUSSION

Wis. Stat., §49.85(2)(b), 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 W-2 and child care assistance overpayments.

The Department of Children and Families 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. Id. at §49.85(3)(b).

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.

The Department is required to recover all overpayments of public assistance benefits. Requests for fact finding reviews of actions to recover W-2 benefits must be filed within 45 days of the action. Wis. Admin. Code, §DCF 101.22(1). Appeals of tax intercept notices must be filed within 30 days of the notice. Wis. Stat. §49.85(3)(a)2.

Petitioner seeks to have the original overpayment reversed in this appeal. She testified that she does not believe she received the W-2 payments at issue. The problem is that her appeal is untimely. She did not request a fact finding review of the original overpayment notice, and she did not appeal the tax intercept notice within 30 days. It is too late now to address the merits of the original overpayment claim.

CONCLUSIONS OF LAW

Petitioner’s appeal of the PACU’s tax intercept was untimely.

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 16th day of October, 2014

\sBrian C. Schneider
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 16, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit