



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/161214

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on November 11, 2014, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner timely appealed the agency’s tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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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 # ) is a resident of Kenosha County.
2. On July 11, 2014 the agency sent Petitioner a tax intercept notice. Petitioner does not dispute that he received that notice. Rather, Petitioner states that he was caring for his sick mother during that time period.

3. On October 14, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.
4. Ultimately Petitioner seeks to challenge the underlying childcare overpayment. The agency sent Petitioner the notice of overpayment on February 13, 2014.

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. 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 11, 2014, and the Division of Hearings and Appeals did not receive Petitioner's request for fair hearing until October 14, 2014. This is well outside of the 30 day window, and Petitioner's appeal of the tax intercept is untimely. Therefore, I am without jurisdiction to decide whether the agency correctly implemented the tax intercept.

I note that even if I had jurisdiction to decide this issue, I would decide that the agency correctly implemented a tax intercept. The agency sent Petitioner a Notice of Overpayment, a Repayment agreement, three dunning notices, and finally a notice the agency was going to intercept his taxes.

At the hearing Petitioner attempted to argue that the underlying overpayment should have never been assessed because it was not his fault. The notice of overpayment is from February 2014, and Petitioner is well past his appeal deadline for that issue. However, I note that the agency is required to collect overpayments regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1.

CONCLUSIONS OF LAW

Petitioner's appeal is not timely, and the undersigned ALJ is without jurisdiction to address whether or not the agency correctly implemented a tax intercept.

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 14th day of November, 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 November 14, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit