



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/161450

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regard to Other, a hearing was held on November 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly issued the October 17, 2014 levy notice.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Cynthia Martinez
Wisconsin Works (W-2)

, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent overpayment notification on October 22, 1999.
3. Petitioner was sent a repayment agreement on October 21, 1999.
4. Petitioner was sent numerous other repayment agreements and dunning notices in 2000.

5. Petitioner never responded.
6. The agency sent a levy notice to petitioner on October 17, 2014 (see ex. #3).
7. Petitioner filed a timely appeal.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to W-2 child care benefits) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. *Wis. Adm. Code, §DCF 101.23(4)*. One method of collection that the department may utilize is the use of a levy under *Wis. Stat., §49.195 (3N)*. *Wis. Adm. Code, §DCF 101.23(10)(b)* provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, *Stats.*, is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. **The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor.** *Wis. Admin. Code, § DCF 101.23(10)(e)*. The levy is not stayed pending an appeal where property is secured through the levy. *§DCF 101.23(10)(c)(3)*.

Petitioner, at the time of hearing, simply claimed not to remember getting the overpayment notices in the past. She repeatedly stated that she has not received benefits in a long time. But the overpayment underlying this action stems from 1999 or before. There is no legitimate question in this case as to the identity of the debtor. Further, there is no issue in this case as to the amount of the debt.

CONCLUSIONS OF LAW

That the issues for this appeal are limited to the identity of the debtor and the amount of the debt, and that Petitioner has not demonstrated any basis for questioning either of these, thus there is no basis for remand of this levy.

THEREFORE, it is

ORDERED

That this appeal is 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 21st day of November, 2014

\sJohn P. Tedesco
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 21, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit