



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

WTI/159790

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2014, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a telephonic hearing was held on November 05, 2014, at Mauston, Wisconsin. At the request of petitioner, a hearing set for October 7, 2014 was rescheduled.

The issue for determination is whether the petitioner's appeal of her July 11, 2014 W-2 tax intercept notice is timely for jurisdictional purposes.

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: Sarah Holewinski, W-2 program coordinator
Juneau County DHS
220 E. LaCrosse Street
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Juneau County.
2. The petitioner was a recipient of the Wisconsin Works (W-2) program during the period of July 1, 2013 through August 31, 2013.

3. On February 19, 2014, the Juneau County W-2 agency mailed written Wisconsin Works (W-2) Overpayment Notices to the petitioner at her then correct address of record. Those notices advised the petitioner that she had been overpaid a total of \$532.00 in W-2 benefits from July 1, 2013 through August 31, 2013. The basis for those notices was that petitioner failed to timely report to the agency her return to full-time employment as of June 29, 2013. Those notices further indicated that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) within 45 days from the date of that notice in order to have a timely appeal. Petitioner did not submit a timely appeal to DHA.
4. On July 11, 2014, the Department's Public Assistance Collect Unit (PACU) issued a written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$532.00 in W-2 overpayments issued to the petitioner for the W-2 overpayment period of July 1, 2013 through August 31, 2013. See Exhibit 1. The petitioner appeals that tax intercept notice.
5. The petitioner mailed her W-2 tax intercept appeal to the Division of Hearing and Appeals (DHA) on August 12, 2014, and her appeal was received at DHA on August 13, 2014.
6. The petitioner was unable to establish with any evidence that she filed her W-2 tax intercept appeal to DHA prior to August 12, 2014.
7. The petitioner's remaining tax intercept balance due was \$532.00 as of the November 5, 2014 hearing date.

DISCUSSION

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 overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or **W-2 payments made incorrectly**.

The Department of Workforce Development 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).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department concerning a state tax refund intercept must be filed with the Division of Hearings and Appeals (DHA) **within 30 days** of the date of the notice of the tax intercept pursuant to sec. 49.85(3), Wis. Stats.

In this case, the petitioner did not contest that she received the Department's July 11, 2014 tax intercept notice. In fact, during the hearing, petitioner admitted that her July 12, 2014 appeal was not timely, but explained in vague terms that she had called an 800 number attempting to discuss the tax intercept notice. Even if such is the case, the deadline to timely appeal the tax intercept notice is not stopped until the petitioner actually filed her appeal with the Division of Hearings and Appeals (DHA). There is no evidence in the record that petitioner mailed her appeal to DHA until August 12, 2014 and such appeal was received at DHA on August 13, 2014. The petitioner also was unable to present any evidence that she made any payments towards her remaining \$532 tax intercept amount. Accordingly, based upon the above, I must conclude that petitioner failed to timely file her W-2 tax intercept appeal and thus there is no subject matter jurisdiction.

CONCLUSIONS OF LAW

There is no jurisdiction regarding the issue of whether the Department is correctly pursuing its July 11, 2014 W-2 tax intercept against the petitioner's taxes, as the petitioner's appeal is untimely.

THEREFORE, it is ORDERED

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 8th day of January, 2015

\sGary M. Wolkstein
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 January 8, 2015.

Wisconsin Works (W-2)
Public Assistance Collection Unit