



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

LVO/160730

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit to issue Child Care Levy, a telephonic hearing was held on October 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the Department's August 30, 2014 Public Assistance Unit Levy Notice is timely for subject matter jurisdictional purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted, DCF collections worker
Public Assistance Collection Unit
Department of Children And Families
210 East Washington Avenue
P.O. Box 8938
Milwaukee, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. The Department sent February 25, 2014 Child Care overpayment notices to the petitioner stating that she been overpaid child care benefits for the period from January 6, 2013 to August 17, 2013

in the amount of \$5,030.00. The bases for the overpayment was that during the period of January, 2013 to July, 2013, petitioner was not in any W-2 approved activity to receive continued child care benefits, and during August, 2013, petitioner's household income was above the income limit. That notice was sent to the petitioner at her correct address of record. The Notice stated that petitioner must appeal to DHA within 45 days of the date of that notice.

3. Petitioner failed to timely appeal to DHA her child care overpayment notices.
4. Petitioner was sent a repayment agreement for the child care overpayment that was dated March 5, 2014.
5. Petitioner was sent three "dunning notices" dated April 2, 2014, May 2, 2014, and June 3, 2014.
6. Petitioner was sent a 'Public Assistance Collection Unit Levy Issued' notice dated August 30, 2014 in the amount of \$5,061 from the child care overpayment period of January 6, 2013 to August 17, 2013. That notice informed Petitioner that the levy had been issued by the Department of Children and Families' Public Assistance Collection Unit to seize any property up to the amount of the levy. Finally, the notice indicated that a hearing could be requested but must be requested within 21 days of the date of the notice (September 20, 2014) by sending a written request for a hearing to the Division of Hearings and Appeals. The Division's address was provided. See Exhibit 1.
7. The petitioner admitted that she received the August 30, 2014 Levy Notice (Exhibit 1).
8. On September 22, 2014, the Division of Hearings and Appeals received the petitioner's appeal of her Levy Notice.
9. There is no evidence in the hearing record that petitioner has made any payment toward her \$5,061 Levy or that there is any issue in this case regarding any "mistaken identity of the debtor."

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3)*. The February, 2014 notices of child care over issuance were sent to the petitioner at her correct address of record, and contained appeal instructions, noting the appeal deadline to be 45 days. No appeal was filed until the instant appeal on September 22, 2014. Thus this September 22, 2014 appeal is untimely as to the February, 2014 child care overpayment notices sent to the petitioner.

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a levy, i.e., whether the department is proceeding against the correct individual and whether there have been prior payments of the debt, **the appeal must be timely.**

The Wisconsin Administrative Code, at *Wis. Admin. Code, § DCF 101.23 (10) (c)*, states that:

...

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that

the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

...  
*Wis. Admin. Code, §DCF 101.23(10)(c).*

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)*.

In the instant case, during the hearing, petitioner admitted that she timely received the August 30, 2014 Levy Notice, but did not file her DHA until September 22, 2014. See Finding of Facts #7 and #8. The petitioner explained that she did not open her mail right away because she is a busy single mother. As a result, her appeal of the Levy Notice was not filed until two days after the September 20, 2014 deadline for a timely appeal. While petitioner’s explanation is understandable, such explanation does not establish good cause for failing to meet the appeal deadline. Accordingly, based upon the above, I must conclude that the petitioner’s appeal of the Department’s August 30, 2014 Public Assistance Unit Levy Notice is untimely for subject matter jurisdictional purposes.

### CONCLUSIONS OF LAW

1. That petitioner’s September 22, 2014 appeal is untimely as to the February, 2014 child care overpayment notices sent to the petitioner.
2. Petitioner’s September 22, 2014 appeal of the Department’s August 30 2014 Public Assistance Unit Levy Notice is untimely for jurisdictional purposes.

**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 12th day of January, 2015

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\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 12, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit