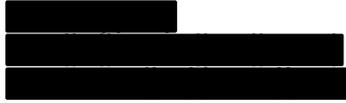




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/161892

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2014, under Wis. Stat. §§46.85 and 227.44 and Wis. Admin. Code §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to intercept the petitioner's income tax refund and apply it against a prior overpayment of issue a levy against petitioner and apply it against a prior overpayment of child care benefits, a telephonic hearing was held on December 04, 2014,.

The issues for determination are whether the petitioner has exhausted her appeal rights concerning the child care overpayment and whether she has made a payment of this public assistance overpayment debt or the levy is being applied based on a mistaken identity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Shawnte Julien, CC Subsidy Specialist Sr.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. By notices mailed to petitioner's address of record dated April 24, 2014 the agency informed petitioner that she was overpaid \$3235.64 in child care provided from October 7, 2012-March 31, 2013 due to an intentional program violation (IPV) and \$1625.21 from October 6, 2013-March 31, 2014 due to client error. Those notices contained her appeal rights. See Exhibit 1. Petitioner did not timely appeal from those notices.
3. On May 2, 2013 the agency mailed to petitioner's address of record a Repayment Agreement for the child care overpayment. See Exhibit 3.
4. On June 3, 2014 the agency mailed to petitioner's address of record a Dunning Notice regarding the child care overpayments. See Exhibit 4.
5. On July 2, 2014 the agency mailed to petitioner's address of record a Dunning Notice regarding the child care overpayments. See Exhibit 4.
6. On August 4, 2014 the agency mailed to petitioner's address of record a Dunning Notice regarding the child care overpayments. See Exhibit 4.
7. On October 22, 2014 the Department of Children and Families (DCF), Public Assistance Collection Unit (PACU) mailed to petitioner's address of record a notice of a levy issuance to the petitioner, stating that it found the debt (child care overpayment) delinquent. That notice is the subject of this decision and informed her that she had the right to appeal the decision by requesting a hearing with the Division of Hearing & Appeals and that the appeal was limited to questions of prior payment and mistaken identity of the debtor. See Exhibit 5.
8. Petitioner is the person who owes the debt in question. The agency has not sent a notice or proceeded against an incorrect individual based on mistaken identity.
9. Petitioner has not made any payment on the overpayment for child care funds.
10. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 12, 2014.

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, overpayment of AFDC and Medical Assistance 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 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).

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.*

(Emphasis added).

The petitioner has had a prior opportunity for hearing on the merits of the overpayment. The agency has met its burden to show that it mailed those overpayment notices to her address of record. As the petitioner has exhausted her appeal rights by failing to request a hearing in a timely manner, this appeal must be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Adm. Code §DCF 101.23(10)(c)(3). Petitioner did not dispute that she is the individual subject to the overpayment determination in the instant case. She also provided no evidence of prior payment and the agency's records show none.

I add, given petitioner's testimony at hearing, that Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. §49.195(3). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual*, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/>.

I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

1. There is no jurisdiction to consider the merits of the child care overpayment as the petitioner had prior opportunities to appeal the overpayment but did not do so.
2. The levy is being applied against the correct individual and there is no evidence that the department is not pursuing the correct amount of the debt.
3. The department acted correctly in instituting levy proceedings against the petitioner since the petitioner has not already made a prior full payment of her child care overpayment.
4. The Petitioner was overpaid child care benefits in the amount of \$4891.85.
5. The Department may certify the sum of \$4891.85 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition for review 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 Milwaukee,
Wisconsin, this 16th day of February, 2015

\sKelly Cochrane
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 February 16, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit