



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

PTI/162256

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 25, 2014, under Wis. Stat. § 227.42, Wis. Admin. Code § DCF 201.07(1) and Wis. Stat. § 49.85(4), to review a decision by the Brown County Human Services in regard to Other, a hearing was held on February 17, 2015, at Green Bay, Wisconsin. A hearing set for February 10, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly seeks to recover a CC overpayment from the petitioner via state income tax refund interception.

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: Diane Van Asten, fraud investigator  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. On November 14, 2014, the Department issued written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$3,194.40 in alleged W-2 CC overpayments made to her child day care business (claim # [REDACTED]). The interception notice was addressed to the petitioner at the last address on file for her at the county agency (which is also her current address). *See*, Exhibit 3.
3. CC subsidies totaling at least \$3,194.40 were issued to the petitioner for the child G.L. from December 23, 2012 through September 29, 2013. The agency later determined that the petitioner was not eligible for any of the CC paid for G.L., due to “provider entered wrong hours of attendance.” The agency’s arithmetic in calculating this overpayment is not contested.
4. On May 27, 2014, the county agency issued a *CC Payment Adjustment Notice of Decision* and worksheet to the petitioner, advising that her day care had been overpaid \$3,194.40 from December 23, 2012 through September 29, 2013. The petitioner did not file a fair hearing request to contest the overpayment determination (30 day limit). *See*, Exhibit 1.
5. The Department issued a Repayment Agreement to the petitioner for this overpayment on June 3, 2014. It also mailed dunning letters to her on July 2, August 8, and September 3, 2014.
6. The petitioner is currently an inactive provider.
7. The Department’s overpayment theory is that the child G.L. was living in the petitioner’s household during the CC overpayment period. A provider cannot collect CC payments for a child who resides in her household. G.L.’s mother is deceased, and the petitioner is her godmother. Currently, the child lives with the child’s father. At hearing, the petitioner testified that G.L. was living the majority of the time with the father, rather than the petitioner, during the overpayment period. The father did not testify. The petitioner presented no good cause reason for her failure to timely appeal the *Notice of Decision* referenced above. The agency established the G.L.’s father signed a power of attorney document in 2012 empowering the petitioner to make decisions for this child. Also, in May 2014, a housemate of the petitioner’s, [REDACTED] [REDACTED], told police that G.L. had been living and sleeping at the residence for about a year.
8. The petitioner has made payments totaling \$365.97 against the overpayment claim as of March 13, 2015, leaving a balance of \$2,828.43.

### 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 childcare 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).

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. She did not file a hearing request to challenge that overpayment within the 30 day period. The petitioner does not get another opportunity to argue the validity of the overpayment decision here.

The determination by the county agency that the petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits. *See*, Wis. Stat. § 49.195(3). The Department may utilize tax intercept as a means of recovering the overpayment. Wis. Stat. § 49.85. The petitioner did not establish that the Department has erred in its arithmetic in arriving at the current amount to be intercepted (which is the primary function of an interception hearing).

### **CONCLUSIONS OF LAW**

1. The Department correctly certified the sum of \$3,194.40 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.
2. The petitioner owes \$2,828.43 on claim # [REDACTED] as of the date of this Decision.

**THEREFORE, it is**

**ORDERED**

That the petition 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 17th day of March, 2015

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\sNancy J. Gagnon  
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 March 17, 2015.

Brown County Human Services  
Public Assistance Collection Unit