



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/163557

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Dane County Department of Human Services in regard to Child Care (CC) overpayment recovery, a hearing was held on March 24, 2015, at Madison, Wisconsin.

The issue for determination are (1) whether this Administrative Law Judge (ALJ) has jurisdiction to consider the merits of the petitioner's appeal, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of \$11,879.36 in W-2 CC benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [Redacted] Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. On August 13, 2014, the Department issued a *Child Care Client Overpayment Notice* to the petitioner advising that she had been overpaid \$11,879.36 in childcare benefits for the August 2013 through May 2014 period. *See*, Exhibit A1-A2. The notice advised of the 45-day time limit for appealing the overpayment; the petitioner did not file a fair hearing request to challenge that overpayment.
3. The Department mailed a Repayment Agreement to the petitioner on September 3, 2014. Next, it mailed three dunning letters to her, following three months' failure to make payments. *See*, Exhibits A3, A4.
4. On January 16, 2015, the Department issued a written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$11,879.36 (*claim #* [REDACTED]) in alleged W-2 childcare overpayments. The notice advised the petitioner to file an appeal, if desired, within 30 days of the notice date. *See*, Exhibit A5. The petitioner received this notice, and subsequently appealed from the interception letter on January 27, 2015.
5. A payment of \$293.34 (non-intercept) was made against the claim on March 13, 2015 leaving a balance of \$11,586.02.

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 45 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).

In addition to arguing that the overpayment was caused by worker error, and noting that her ex-partner should share in the overpayment liability (he does), the petitioner complained that money is being withheld from her payroll checks to pay off this claim. That collection mechanism is the levy process, for which the petitioner should have been given a levy notice, with hearing rights. The hearing request before me challenged the tax interception process, not the levy process. The county representative at this

hearing was not prepared or able to address the levy process. Therefore, I cannot adjudicate the propriety of the levy that may be occurring. The petitioner may wish to file a new hearing request with this office to challenge the levy against her paychecks.

CONCLUSIONS OF LAW

1. The Department correctly certified the sum of \$11,879.36 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.
2. As of March 14, 2015, the amount remaining for collection was \$11,586.02.

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, Room G200, 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 May, 2015

\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 May 12, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit