



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

CTI/163566

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC) benefits, a hearing was held on February 18, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department may proceed with collection of a CC overpayment through the state income tax refund interception process.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. CC totaling at least \$6,659.22 was issued on the petitioner's behalf from September 1, 2013, through April 30, 2014. The agency later determined that the petitioner, who was employed, was

over the program's gross income limit, so she was not eligible for CC. The agency's arithmetic in calculating this overpayment is not contested. The petitioner correctly reported her income to the agency, and an agency worker entered a lower (net) amount of income in the eligibility calculation.

3. On August 27, 2014, the Department's local agency mailed a *CC Client Overpayment Notice* and worksheet to the petitioner at her correct address, advising that her household had been overpaid \$6,659.22 from September 1, 2013, through April 30, 2014. Also on August 27, 2014, the Department mailed a computer-generated *CC Overpayment Notice* to the petitioner at the same address. Both notices advised of fair hearing rights (45-day filing limit).
4. The Department mailed a Repayment Agreement for this overpayment to the petitioner's correct address on September 3, 2014. Because the Agreement was not returned and payments were not made, the Department mailed dunning letters to the petitioner's correct address on October 2, November 4, and December 2, 2014.
5. On January 26, 2015, the Department issued written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$6,659.22 in alleged W-2 CC overpayments made to her household (claims # [Redact], # [Redact]). The interception notice was addressed to the petitioner at the same address as the notices above. She received the interception notice and filed this appeal.

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 argues that she only got one notice related to her overpayment (presumably the interception notice from January 2015), so she should now be able to contest the overpayment determination. Upon reflection and review of the multiple notices regarding the overpayment, all sent to her correct address, I do not believe her statement that she received only one overpayment-related notice. Thus, she has had a prior opportunity for hearing on the merits of the overpayment, and did not use it. 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. 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

The Department correctly certified the sum of \$6,659.22 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.

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 27th day of February, 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 February 27, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit