



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/163682

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 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, a hearing was held on April 21, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a notice of tax intercept to the Petitioner.

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: Lareina Horton

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On February 3, 2014, the Petitioner contacted the agency by telephone to update her child care authorizations.

3. On February 13, 2014, the agency received returned mail sent to the Petitioner. Her case was pended. The agency attempted to contact the Petitioner at her last-known telephone number and left a message for the Petitioner to contact the agency.
4. On February 19 and 20, 2014, the agency issued Child Care Client Overpayment Notices and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$5,088.99 for the period of May 19, 2013 – August 31, 2013. The notice was issued to the Petitioner at her last-known address on 65th St. in Milwaukee. The notice informed the Petitioner of the right to request a hearing by submitting a request within 45 days of the date of the notice.
5. On February 20, 2014, the agency issued a Notice of Intentional Program Violation to the Petitioner at her last-known address on 65th St. in Milwaukee. The notice informed the Petitioner that the agency found she had misrepresented her need for child care and had intentionally violated child care rules. It informed the Petitioner of the right to appeal the agency action by filing a request for hearing no later than March 24, 2014.
6. On February 25, 2014, the notice of child care overpayment was returned to the agency with the message: “return to sender, not deliverable as address, unable to forward.”
7. On March 4, 2014, repayment agreements were issued to the Petitioner at her 65th St. address.
8. On April 2, 2014, September 3, 2014 and October 2, 2014, the agency issued dunning notices to the Petitioner.
9. On April 7 and 9, 2014, the Petitioner contacted the agency by telephone to inquire about the process for appealing the Intentional Program Violation and overpayment sanctions. The agency provided the Petitioner with the website for the appeal forms, explained the deadlines for appeal and how to request an appeal. The Petitioner reported a new address on 45th St. in Milwaukee.
10. On April 11, 2014, the Petitioner filed an appeal of the Intentional Program Violation. The case was designated as DHA Case No. ML-14-0095. On August 13, 2014, the Department of Children and Families filed a motion to dismiss the case on the grounds that the appeal was not timely. On September 22, 2014, DHA issued a decision and order finding the appeal was untimely and dismissed the case.
11. On April 16, 2014, the Petitioner filed an appeal designated as DHA Case No. CCO 156791. A hearing was scheduled for May 15, 2014. On May 15, 2014, the Petitioner contacted DHA to request that the hearing be rescheduled. A new hearing was scheduled for July 15, 2014. On July 14, 2014, the Petitioner contacted DHA to request another reschedule due to a conflicting bankruptcy court proceeding. The hearing was rescheduled a second time to August 12, 2014. An order of dismissal was issued on August 13, 2014 when the Petitioner failed to appear for the re-scheduled hearing. At all times relevant to the matter in CCO/156971, the Petitioner reported her address to DHA as 30th St. All hearing notices and the decision were mailed to the 30th St. address.
12. The Petitioner did not report her new address on 30th St. to the agency until January, 2015. In September, 2014, the Petitioner was in the agency to complete a renewal and reported she was at the same residence. On or about September 29, 2014, Petitioner notified the agency that her mail should go to a PO Box.
13. On September 26, 2014, the Petitioner’s appeal of the Intentional Program violation was dismissed.
14. On December 12, 2014, the agency issued a notice of state tax intercept informing the Petitioner that the agency may intercept tax refunds to recover an unpaid public assistance debt in the amount of \$5,088.99. The notice was issued to the Petitioner at her last-known address on 45th St. in Milwaukee. The notice informed the Petitioner that she could appeal the agency action by

submitting a request for hearing within 30 days of the date of the notice. It further informed the Petitioner that she does not have a right to a hearing on any issue for which she had a prior right to a hearing.

15. On January 16, 2015, the agency issued a notice of state tax intercept informing the Petitioner that the agency may intercept tax refunds to recover an unpaid public assistance debt in the amount of \$7. The notice was issued to the Petitioner at her address on 30th St. in Milwaukee. The notice informed the Petitioner that she could appeal the agency action by submitting a request for hearing within 30 days of the date of the notice. It further informed the Petitioner that she does not have a right to a hearing on any issue for which she had a prior right to a hearing.
16. On January 31, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action, including an overpayment of benefits, by an agency be filed within 45 days of the date of the action. Wis. Stats., §49.195(3) and Child Care Manual (CCM), § 2.1.5.3. An appeal of a tax intercept action must be filed within 30 days of the date of the issuance of the notice. Wis. Stats., 49.85(4).

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 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.

In this case, the Petitioner wanted to appeal the merits of the overpayment. As noted above, the notices of overpayment were issued to the Petitioner on February 19 and 20, 2014. On or about April 16, 2014, the Petitioner filed an appeal. Petitioner provided her address on 30th St. to DHA and all notices and the hearing decision were mailed to that address.

The Petitioner argued at the hearing that she never received the hearing notice or decision. The Petitioner's testimony is not credible. The notice and decision were mailed to the address she provided to DHA when she filed her appeal. She testified at the hearing that she did not move to 30th St. until August, 2014. This is clearly inconsistent with the facts as she clearly reported her address on 30th St. to DHA in April, 2014 when she filed her appeal.

The Petitioner's appeal with regard to the overpayment is untimely. She did not request a re-hearing as provided in the hearing decision in DHA Case No. CCO/156971.

I conclude that the Petitioner's appeal with regard to the tax intercept issued on December 12, 2014 is timely. The tax intercept notice issued by the Department was not mailed to the last-known mailing address of the Petitioner. It was mailed to the 45th St. address. The Petitioner had reported by September, 2014 that she had a PO Box for a mailing address and all child care notices and correspondence had been

issued to the PO Box since September, 2014. There was no explanation why the tax intercept went to the Petitioner's old address. Therefore, although the Petitioner's appeal was filed more than 30 days after the issuance of the tax intercept notice, I conclude it was timely based on the agency mailing the notice to an incorrect address.

As noted above, Wis. Stats., §49.85(4)(b) excludes the right to a hearing on any issue for which an individual had a prior hearing or an opportunity for a prior hearing. In this case, the Petitioner had an opportunity for a hearing on the overpayment. She abandoned that appeal. Therefore, she may not now raise that issue in contesting the tax intercept. The only issue that I may consider is whether the agency properly issued a tax intercept for an unpaid public assistance debt.

The evidence is clear that the Petitioner has an unpaid public assistance debt for an overissuance of child care benefits in the amount of \$5,088.99 plus a collection fee of \$7. The agency issued the proper dunning notices to the Petitioner at her last-known addresses. Therefore, the agency may utilize tax intercept as a means of recovering the overpayment.

CONCLUSIONS OF LAW

The Department correctly certified the sum of \$5,088.99 plus a collection fee of \$7 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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.

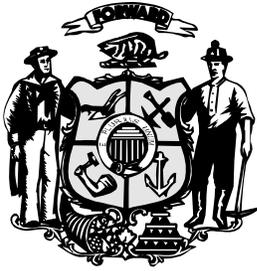
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 10th day of July, 2015

\sDebra Bursinger
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 July 10, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit