FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CTI/163961

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on April 22, 2015, at Kenosha, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703
By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.
2. On February 13, 2014, the agency issued a Child Care Overpayment Notification to the Petitioner and his wife, informing them that the agency was seeking to recover an over-issuance of benefits in the amount of $12,867.38 for the period for January 1, 2013 through December 31, 2013, due

to a failure to accurately report household members. Specifically, the agency alleged that the Petitioner's wife failed to report the Petitioner in the home. (Exhibit 4)

3. The Petitioner's wife filed an appeal on February 20, 2014. (Exhibit 4)

4. On June 18, 2014, the Division of Hearings and Appeals (DHA) issued a decision, finding that the Petitioner's wife did not report the Petitioner in the home. However, the June 18th decision also indicated that the agency did not meet its burden to prove Petitioner and his wife were not engaged in an approved activity. The matter was remanded to the agency for further investigation into whether Petitioner was engaged in approved activities and with instructions to re-determine the amount of the overpayment. (Exhibit 4)

5. On July 2, 2014, the agency issued a Child Care Client Overpayment Notice to the Petitioner, indicating that she was overpaid child care benefits in the amount of $10,611.70 for the period of December 30, 2012 to December 28, 2013. (Exhibit 6)

6. On August 4, 2014, the agency sent the Petitioner a repayment agreement. (Exhibit 17)

7. On September 3, 2014, October 2, 2014 and November 4, 2014, the agency sent the Petitioner dunning notices (reminders) concerning the $10,611.80 overpayment. (Exhibit 8)

8. By January 5, 2015, a total of $80.00 had been paid toward the debt. Payments were made on November 26, 2014 and January 5, 2015. (Exhibit 9)

9. On January 16, 2015, the Public Assistance Collections Unit sent the Petitioner a tax intercept notice, advising him that his state tax refunds would be intercepted to satisfy the overpayment. (Exhibit 13)

10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 11, 2015. (Exhibit 1)

DISCUSSION

Wis. Stats. §49.195(3) states that county agencies must determine when an overpayment in child care benefits has occurred and that it must, "promptly recover all overpayments".

Wis. Stat., §49.85(2)(b), provides that the Department of Children and Families shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover under Wis. Stats. §§ 49.161, 49.195(3) and 49.147(6)(cm).

The Department of Children and Families 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)(b).

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*

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat. §49.85(3)(a)2

The Wisconsin Shares Child Care Assistance Manual §2.1.6 and §2.1.6.2 describes the collections process used by the Department of Children and Families:

1. An overpayment notice is issued.
2. A repayment agreement is issued. Local Agencies and the Public Assistance Collections Unit can negotiate a repayment plan, if the balance of the debt cannot be paid in three years, but the minimum monthly payment must be $20.00.
3. If the repayment agreement is not returned OR a full payment is missed, a dunning notice is issued.
4. If 3 (three) dunning notices are issued over the life of the debt, the overpayment is referred for further collections actions: levy, warrants/liens and tax interception.

The agency sent the Petitioner an overpayment notice and a repayment agreement. The agency properly sent Petitioner three dunning notices to remind Petitioner to make payments towards the child care overpayment. Petitioner did not make any payments toward the debt, until after the third dunning notice was issued. As such, the agency correctly notified Petitioner, on January 16, 2015, of its intention to intercept any tax refunds or credits that may become due him.

The Petitioner's wife argues that they were not given proper notice that the debt would be referred for collection, if three payments were missed. However, page 3 of the repayment agreement states, "A debt shall be considered delinquent if the debtor failed to make the monthly payment by the due date, three times over the life of the debt." (See Exhibit 17) It goes on to state, "Failure to complete the repayment agreement and/or make scheduled payments may result in further collection actions, including, but not limited to any of the following:…2) Referral to State and/or Federal tax offset programs…" (Id.)

The Petitioner's wife testified that they did not get the repayment agreement. However, Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, "summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." Further, "the mailing of a letter creates a presumption that the letter was delivered and received." State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.W.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

There is insufficient evidence of non-receipt. On the contrary, the Petitioner's wife confirmed that the address to which the repayment agreement was sent was correct and the Petitioner received at least two dunning notices sent to the same address.

Based upon the foregoing, it is found that the Petitioner was given timely and adequate notice of the consequences of failing to make payments on the debt.

CONCLUSIONS OF LAW

The agency correctly instituted a tax intercept to recover a child care overpayment from the Petitioner.

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 Milwaukee,
Wisconsin, this 23rd day of June, 2015

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\sMayumi M. Ishii
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 June 23, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit