



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/163994

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Portage County Department of Human Services in regard to Child Care, a hearing was held on April 14, 2015, at Stevens Point, Wisconsin.

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:



Respondent:

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

By: [Redacted] ES Worker
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Portage County.
2. On February 13, 2015, the Department mailed written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$595.55 in alleged W-2 CC overpayments made to her household (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), and was not returned by the postal service as undelivered.

3. CC subsidies totaling at least \$595.55 were issued on the petitioner's behalf from June 30, 2013 through August 31, 2013. The agency later determined that the petitioner was not eligible for this amount of CC, due to the presence of her unemployed spouse in the home. The agency's arithmetic in calculating this overpayment is not contested.
4. On October 13, 2014, the county agency issued a *CC Overpayment Notice* and worksheet to the petitioner, advising that her household had been overpaid \$595.55 from June 30, 2013 through August 31, 2013. The petitioner did not timely file a fair hearing request to contest the overpayment determination.
5. The petitioner was employed throughout the overpayment period, and she took her child to daycare several days weekly. She reported to the agency that her husband was also working several days per week, rendering him unavailable for provision of child care. However, he was laid off on June 29, 2013, making him available to watch their child. He had not returned to work by the time that the agency discovered that he was not working, in August 2013. The result was that the petitioner was not eligible for any CC when her husband was available for child care. The petitioner subsequently divorced the husband.
6. The petitioner has made no payments against the overpayment claim.

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).

CONCLUSIONS OF LAW

1. The Department correctly certified the sum of \$595.55 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 17th day of April, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 17, 2015.

Portage County Department of Human Services
Public Assistance Collection Unit