



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/164019

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 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 March 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely.

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On September 12, 2011, the Department of Children and Families sent the Petitioner a manual Child Care Overpayment Notice, indicating that she was overpaid childcare benefits in the amount of \$4,446 for the period of August 1, 2010 to February 28, 2011. (Exhibit 2)
3. On September 13, 2011, Milwaukee Enrollment Services sent the Petitioner an automated Child Care Overpayment Notification, claim number [redacted], again indicating that the Petitioner was

- overpaid child care benefits in the amount of \$4,446.05 for the period of August 1, 2010 to February 28, 2011. (Exhibit 3)
4. On October 4, 2011, the Public Assistance Collections Until (PACU) sent the Petitioner a repayment agreement. (Exhibit 4)
  5. On November 2, 2011, December 2, 2011 and January 3, 2012, PACU sent the Petitioner dunning notices (reminders) regarding the overpayment. (Exhibit 5)
  6. On February 17, 2012, PACU sent the Petitioner a tax intercept notice, indicating that her current and future state income tax refunds would be intercepted to satisfy the overpayment. (Exhibit 6)
  7. PACU sent the Petitioner another repayment agreement on July 3, 2012. (Exhibit 7)
  8. PACU sent the Petitioner notices on January 3, 2013, February 3, 2013, February 7, 2013, March 4, 2013, April 2, 2013, and February 12, 2015, advising her that payments were made toward the child care overpayment, two of which were from tax intercepts. (Exhibit 8)
  9. All notices were sent to the Petitioner at [REDACTED] – the same address the Petitioner listed on her request for fair hearing. (Exhibits 1-8)
  10. There is no record of any returned mail. (Testimony of Ms. Julien)
  11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 17, 2015. (Exhibit 1)

### DISCUSSION

#### *Appeal of the Tax Intercept was Untimely*

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 In this case, the date of the tax intercept notice was February 12, 2012. The notice clearly explained that the Petitioner had 30 days to contact the Division of Hearings and Appeals and file an appeal. As such, Petitioner needed to file her appeal by March 13, 2012. Her appeal was not filed until February 2015, three years past the appeal deadline. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal.

Petitioner claims that she did not get the February 12, 2012 notice and states that she lives in a large apartment building that has units with duplicate numbers.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summons, 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.

The Petitioner has not presented any credible evidence to support her claim that she did not receive the notice. On the contrary, the notice was sent to the Petitioner at the same address she used in filing her appeal. (See Exhibits 1 and 6) It is undisputed that this is the correct address. Further, there is no reason to believe that there were delivery problems, because Petitioner clearly received the hearing notice from the Division of Hearings and Appeals. Indeed, she showed up on time for the hearing. Based upon the foregoing, it is found that Petitioner timely received the notice of tax intercept.

It should be noted that even if jurisdiction did exist to hear the merits of Petitioner’s appeal, the record shows that the agency acted correctly.

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 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.

In September 2011 and October 2011, the agency sent the Petitioner an overpayment notice and a repayment agreement to the same address the Petitioner used in her request for fair hearing. The Petitioner did not make any payments, so dunning notices were issued in November 2011, December 2011 and January 2012. Petitioner still did not make any payments toward the debt; her first payment did not occur until January 3, 2013. As such, the agency correctly notified Petitioner, on February 12, 2012, of its intention to intercept any tax refunds or credits that may become due her. Thus, the agency took the correct steps to utilize the tax intercept.

*Appeal of the Underlying Overpayment was Untimely*

The Petitioner also wanted to contest the underlying overpayment, asserting that the daycare provider abused her child, fraudulently billed the Wisconsin Shares program for Petitioner’s child and was subsequently terminated from the Wisconsin Shares Childcare program. However, Petitioner’s appeal of the underlying overpayment is also untimely.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), Wis. Admin. Code §HA 3.05(3), Wisconsin Shares Child Care Assistance Manual, Chapter 2, § 2.1.5.3. A negative action can include the termination of benefits, or the issuance of an overpayment notice.

In the case at hand, the Petitioner was notified on September 12, 2011 and September 13, 2011 of the childcare overpayment. Those notices clearly explained the Petitioner’s appeal rights and how to file an appeal. The Petitioner did not file an appeal until February 2015, three and a half years later. As such, the Petitioner’s

appeal of the underlying childcare overpayment is untimely and there is no jurisdiction to review the accuracy of the overpayment determination.

The Petitioner will have to deal directly with the Public Assistance Collections Unit, if she believes the overpayment determination is in error.

**CONCLUSIONS OF LAW**

Petitioner’s appeal is untimely.

**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**

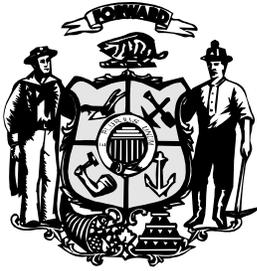
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those 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 Milwaukee,  
Wisconsin, this 10th day of March, 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 March 10, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit