



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

CTI/164776

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 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 14, 2015, at Milwaukee, Wisconsin. The record was held open to allow for the submission of documentation presented by the petitioner at hearing. That documentation was timely received and marked as Exhibit 3.

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

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, Room G200
Madison, Wisconsin 53703

By: Redact

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.

2. On October 29, 2004, the agency issued a Child Care Overpayment Notification to the Petitioner. The notice informed the Petitioner of the agency's intent to seek recovery of an overpayment of child care benefits per claim number [Redact] in the amount of \$13,703.44 for the period of August 1, 2003 – December 31, 2003 and claim number [Redact] in the amount of \$18,518.02 for the period of January 4, 2004 – July 31, 2004. The notice informed the Petitioner of her right to file an appeal of the agency actions with the Division of Hearings and Appeals within 45 days of the agency's decision. See, Exhibit 2, pages 1-6.
3. Petitioner appealed the Childcare overpayment in 2004, DHA case no. 66591. That matter was dismissed due to Petitioner's failure to appear at hearing. Petitioner did not appeal that dismissal, nor did she provide good cause for failure to appear. See, Exhibit 2, page 46.
4. On November 1, 2004, November 9, 2004, May 4, 2009, March 2, 2010, November 11, 2011, May 2, 2012, and October 2, 2012, the agency issued Repayment Agreements to the Petitioner for the child care overpayment. See, Exhibit 2, pages 13-30.
5. On May 3, 2005, June 2, 2005, and July 5, 2005, the agency issued dunning notices to the Petitioner regarding the child care overpayment. See, Exhibit 2, pages 8-12.
6. On August 12, 2005, October 1, 2008, January 27, 2011, February 2, 2011, and March 8, 2012, the agency issued notices of state tax intercept to the Petitioner regarding the unpaid child care overpayment. The notices informed the Petitioner of her right to file a hearing request with the Division of Hearings and Appeals 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." See, Exhibit 2.
7. Petitioner appealed the Childcare tax intercept in 2006, DHA case no. 76576. That matter was dismissed because the appeal was filed 225 days after the expiration of the appeal timeframe. See, Exhibit 2, page 44.
8. On March 23, 2015, the Petitioner filed the instant appeal with the Division of Hearings and Appeals.

### DISCUSSION

Wis. Stat., §49.195(3), provides that the agency must determine if a childcare overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. The Department may utilize tax intercept as a means of recovering the overpayment. Wis. Stat., §46.85.

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 overpayments of W-2 benefits (including child care), food stamps, Aid to Families with Dependent Children (AFDC), and Medical Assistance.

The Department of Workforce Development must notify the person that it intends to certify overpayments 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 disputes the basis for the child care overpayment. However, the Petitioner had a prior opportunity for a hearing on the merits of the child care overpayment. She appealed the overpayment, the appeal was dismissed as abandoned, and Petitioner did not pursue the matter further. In the instant matter, Petitioner presented documentation that she claims demonstrated that she and Solomon Austin did not live together during the overpayment period. See, Exhibit 3. Unfortunately, the time to provide such information expired *years* ago. An administrative law judge does not have authority to rule on matters for which a timely appeal is not filed. Therefore, I have no jurisdiction to consider the Petitioner's arguments related to the merits of the overpayment action.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. 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; FSH §7.3.2.11. The most recent tax intercept notice was dated March 8, 2012. As such, Petitioner needed to file her appeal by April 7, 2012. Petitioner did not file his appeal until approximately three years later. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal of the state tax intercept.

### **CONCLUSIONS OF LAW**

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner's appeal of the State Tax Intercept is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 Madison,  
Wisconsin, this 1st day of July, 2015.

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\sPeter McCombs  
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 1, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit