



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/165443

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to a levy issued by the Department of Children and Families - Public Assistance Collection Unit, a hearing was held on May 06, 2015, at Milwaukee, Wisconsin.

The issues for determination are:

- A. is Petitioner's appeal timely as to a 2012 notice of over issuance of child care benefits,
B. whether Petitioner's appeal of a Department of Children and Families - Public Assistance Collection Unit notice of levy is timely and, if timely,
C. whether there is any basis for remand of the levy.

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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. Petitioner was sent a Public Assistance Collection Unit Levy Issued dated April 15, 2015 that informed Petitioner that the Department of Children and Families Public Assistance Collection Unit would seize any of Petitioner's property in the possession of Andrew Motor Sales up to the amount of the levy excluding exemptions. The amount of the levy was noted to be \$4742.64.
3. Petitioner was sent a Child Care Overpayment Notice dated December 17, 2012 that informed Petitioner that she had been overissued child care benefits in the amount of \$6820.94 from the period of February 2, 2012 through November 30, 2012. This notice was sent to Petitioner at the above address. Appeal instructions were contained in the notice. No appeal was filed until it was mentioned in the letter requesting this appeal.
4. This appeal was filed on April 17, 2015.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3)*. The December 2012 notice of child care overissuance was sent to the correct address and contains appeal instructions, noting the appeal deadline to be 45 days. No appeal was filed until instant appeal on April 17, 2015. Thus this appeal is untimely as to the 2012 notice of child care overissuance.

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a levy, i.e., whether the department is proceeding against the correct individual and whether there have been prior payments of the debt, the appeal must be timely.

The Wisconsin Administrative Code, at *Wis. Admin. Code, § DCF 101.23 (10) (c)*, states that:

...

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3<sup>rd</sup> party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3<sup>rd</sup> party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

...

*Wis. Admin. Code, § DCF101.23(10)(c).*

The above makes apparent that the Department is required to serve the levy by personal service or by mail service that generates a signature of acceptance. Further, failure to accept or receive service does not invalidate the levy but presumably there is a notice from the process server or the U.S. Postal Service that indicates the date of attempted service. Once the service is obtained or attempted, the appeal time limits begin to run. There is nothing in the record to indicate the date of service or attempted service. Nonetheless, this appeal was filed on April 17, 2015, two days after the date of the notice. There are, therefore, no timeliness issues as to the appeal of the levy. Thus this decision will proceed to the merits.

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to child care benefits) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. *Wis. Adm. Code, §DCF 101.23(4)*. One method of collection that the Department may utilize is the use of a levy under *Wis. Stat., §49.195 (3N)*. *Wis. Adm. Code, §DCF 101.23(10)(b)* provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. *Wis. Admin. Code, § DCF 101.23(10)(e)*. The levy is not stayed pending an appeal where property is secured through the levy. *Wis. Admin. Code, §DCF 101.23(10)(c)(3)*.

There is no question this case as to the identity of the debtor. Further, there is no issue in this case as to the amount of the debt.

### CONCLUSIONS OF LAW

1. That this appeal is untimely as to the December 2012 notice of child care overissuance.
2. That this appeal is timely as to the notice of levy.
3. That the issues for this appeal are limited to the identity of the debtor and the amount of the debt that Petitioner has not demonstrated any basis for questioning either of these, thus there is no basis for remand of this levy.

**THEREFORE, it is**

**ORDERED**

That this 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 4th day of August, 2015

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\sDavid D. Fleming  
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 August 4, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit