



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNP/165555

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on June 10, 2015, at Milwaukee, Wisconsin. The record was held open to allow petitioner to submit additional information. Petitioner's additional information was timely received.

Petitioner inadvertently failed to appear for a previously scheduled hearing in this matter, which resulted in a dismissal of her appeal. Petitioner timely filed a request for rehearing and the matter was reopened.

The issue for determination is whether the issuance of a warrant was appropriate.

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: Charita Lamar

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 # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner formerly operated a child care center. On July 29, 2011, the respondent notified petitioner that it intended to recoup an overpayment of \$41,860.64. The notice included petitioner's appeal rights. Exhibit 2-2. Petitioner did not appeal the overpayment.
3. On July 29, 2011, the Department issued a Notice of Suspension to petitioner which informed the petitioner that the Department had suspended and refused all Wisconsin Shares payments to petitioner's child care center. Exhibit 2-4.
4. On August 5, 2011, petitioner appealed the Department's decision to refuse Wisconsin Shares payments to petitioner's child care center. In a decision dated October 17, 2012, the Division of Hearings and Appeals issued a decision finding that the Department correctly refused Wisconsin Shares payments. Exhibit 2-4.
5. The Department sent petitioner notices demanding payment on April 2, May 2, and June 4, 2011.
6. By a notice dated March 27, 2015, the Public Assistance Collection Unit informed petitioner that it was docketing a warrant in Milwaukee County for collection of the balance still owed. That notice indicated that petitioner could file a request for fair hearing within 21 days from the date of the notice.
7. Petitioner filed this appeal on April 22, 2015.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to child care assistance) 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. Stat., §49.195(3p); Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a warrant under Wis. Stat., §49.195 (3m). Wis. Admin. Code, §DCF 101.23(9)(a) 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 may issue a warrant directed to the clerk of circuit court of any county." The administrative code language echoes the language of Wis. Stat., §49.195(3m).

Any debtor who is subject to a warrant has the right to appeal the 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(9)(a)5. The warrant is not withdrawn pending an appeal. Id.

Petitioner seeks to address the underlying overpayment, but the time for appeal of that issue passed long ago. An Administrative Law Judge can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if a hearing request is untimely. Petitioner was informed that an appeal of an overpayment to a child care provider needed to be filed within 30 days of the effective date of the negative action. Exhibit 2-2. While petitioner did appeal the payment suspension and refusal in 2011, the record does not indicate that any overpayment appeal was filed with 30 days following notice of the overpayment.

With regard to the remaining issue, i.e. the levy issuance, the Code allows the Department to utilize more than one collection method to recover an overpayment. I can see nothing that prevents the Department from also issuing a warrant. Wis. Stat., §49.195(3m)(h) provides that if the debtor arranges a repayment schedule and complies with it, the Department *may* withdraw the warrant, but the withdrawal is within the discretion of the Department. In any event, there is no evidence of an executed repayment agreement.

The warrant issued in this case was allowed by state law. By the time any collection was commenced in this case, the debt was long delinquent, and the Department thus may take all legal actions to recover it.

I also note that it appears that the instant warrant appeal was not timely filed, which would deprive the Division of Hearings and Appeals of jurisdiction in this matter. However, the respondent did not raise this issue at hearing, and as such, the record does not provide enough of a basis to make a determination in this regard.

CONCLUSIONS OF LAW

The Department's issuance of a warrant to collect a debt owed by petitioner was a legal, available means of collection of the debt.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 8th day of July, 2015.

\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 8, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit