



FH

Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redacted case name

DECISION

LVO/165805

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the by the State of Wisconsin Department of Children and Families ["DCF"] to issue a levy to seize petitioner's property as a method of collection of delinquent Wisconsin Works ["W-2"] Child Care ["CC"] debts, a Hearing was held via telephone on May 19, 2015.

The issue for determination is whether DCF may issue a levy to seize petitioner's property as a method of collection of petitioner's delinquent CC debts.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

BY: Redacted, 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:

Sean P. Maloney
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # Redact) is a resident of Milwaukee County, Wisconsin.
2. Petitioner received a written letter notice dated September 18, 2013 entitled *Public Assistance Collection Unit Levy Issued* stating an amount due of \$12,128.50 and informing her that: "A levy has been issued by the Department of Children and Families, Public Assistance Collection Unit which seizes any of your property, up to the amount of the levy excluding exemptions, in the possession of or under the control of Jefferson crest LLC." The letter notice explained how to request a Hearing including the time limit for requesting Hearing.
3. The levy referenced in above *Findings of Fact* relates to the following 2 CC overpayment Claims:
  - (I) Claim Redact; November 14, 2010 to February 28, 2011; original amount \$7,659.84; and,
  - (II) Claim Redact; December 10, 2007 to April 30, 2008; original amount \$6,377.00.
4. Overpayment collection charges in the amount of \$6.90 (Claim 3900386213) and \$23.80 (Claim 9900387119) have been added to the amount of Claim Redact.
5. Petitioner requested a Hearing by a letter dated April 29, 2015 and received by the Division of Hearings and Appeals ["DHA"] on May 4, 2015 via U.S. Mail postmarked April 30, 2015; in its entirety that letter stated: "I [petitioner] am disputing the levy against me. I currently receive public assistance and my income is below the national poverty line. I would like a hearing to dispute this."
6. Petitioner does not now present any argument concerning prior payment of the CC debt nor does she present any argument concerning mistaken identity of the debtor.

**DISCUSSION**

First, there is no jurisdiction if a request for a Hearing is not filed timely. A request for a Hearing concerning a levy is untimely if it is not filed within 20 days from the date on the notice. Wis. Admin. Code § DCF 101.23(10)(c)3. (April 2015) and Wis. Admin. Code § DCF 201.04(5)(ep)3.c. (February 2015); See also, Wis. Stat. § 49.195(3n)(s) (2013-14). A Hearing request is considered filed on the date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (September 2001). A Hearing request that is not filed within the 20-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the notice was dated September 18, **2013**. Petitioner did not request a Hearing until **2015**. This is well outside of the allowed 20-day time period. Therefore, petitioner's Hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Second, a Hearing, such as this one, concerning a levy to seize property, is limited to questions of prior payment of the debt that the Wisconsin Department of Children and Families ["DCF"] is proceeding against and mistaken identity of the debtor. Wis. Stat. § 49.195(3n)(s) (2013-14); Wis. Admin. Code § DCF 101.23(10)(c)3. (April 2015). Petitioner does not now present any argument concerning prior payment of the CC debt nor does she present any argument concerning mistaken identity of the debtor.

Petitioner testified that she does not dispute Claim [Redact] and was “okay” with the \$12,128.50 amount cited in the September 18, 2013 *Public Assistance Collection Unit Levy Issued* letter. She testified, nevertheless, that she did not receive notice of Claim [Redact] and wishes to dispute that Claim. However, in her written request for a Hearing petitioner stated that she was “disputing the levy against me.” She did not request a Hearing concerning Claim [Redact]. Further, as noted above, she specified that she was “okay” with the \$12,128.50 amount of the levy. Additionally, petitioner presented no argument or evidence to dispute Claim [Redact]. Claim [Redact] was caused because petitioner was not participating in an approved activity during the time period in question. Petitioner presented nothing to challenge this.<sup>1</sup>

### CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this matter and DCF may issue a levy to seize petitioner’s property as a method of collection of petitioner's delinquent CC debts.

**NOW, 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.

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<sup>1</sup> All CC overpayments must be repaid (even if the overpayment is partly or wholly due to another’s error it must still be repaid). Wis. Admin. Code § DCF 101.23(3) (April 2015); See also, Wis. Admin. Code § DCF 201.04(5)(a)1. (February 2015). A CC overpayment is any CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (April 2015); *Wisconsin Shares Child Care Assistance Manual* (10/2013) ["CC Manual"], 2.1.5.1.

**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 June, 2015

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\sSean P. Maloney  
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 June 8, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit