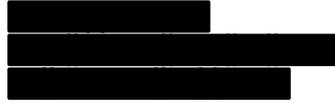




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNO/165846

PRELIMINARY RECITALS

Pursuant to a petition filed May 04, 2015, under Wis. Stat. §§ 46.85 and 227.44Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to issue a Notice of Warrant docketed for a W-2 overpayment, a telephonic hearing was held on July 07, 2015.

The issue for determination is whether the Department of Children and Families (DCF) correctly imposed a lien.

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: Dean Landvatter

Racine County Human Services Department
Racine County Services Center
1717 Taylor Avenue
Racine, WI 53403

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.

2. On August 10, 2012, the agency issued a W-2 Overpayment Notice, with worksheets showing the calculations, to the petitioner informing her it had determined that she had been overpaid \$5223 in W-2 benefits in the period of 8/22/11-6/30/12 (claim # [REDACTED]). Petitioner did not appeal that notice.
3. On September 5, 2012, a Repayment Agreement was mailed to the petitioner asking her to agree to repay the overpayment described in Finding #2 above.
4. The petitioner was issued dunning letters on that debt three times: on October 2, 2012, November 2, 2012, and December 4, 2012.
5. On February 20, 2015 the agency issued a W-2 Overpayment Notice, with worksheets showing the calculations, to the petitioner informing her it had determined that she had been overpaid \$1085 in W-2 benefits in the period of 10/28/13-3/31/14 (claim # [REDACTED]). Petitioner did not appeal that notice.
6. Payments have been made on claim # [REDACTED] in the amount of \$1014 as of the date of hearing. Claim # [REDACTED] has a balance of \$4209.
7. On April 30, 2015, the DCF issued a Notice of Warrant Docketed in Racine County to the petitioner informing her that the DCF had acted to impose a lien of public record against her in the total amount of \$5554, arising from the W-2 benefits overpayments and the service fee for the warrant.
8. On May 4, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the imposition of the lien.

DISCUSSION

Under Wis. Stat. §49.195(3m), if a person fails to repay a public benefits overpayment, the Department may issue a warrant with the county clerk of court that will impose a lien on property owned by the debtor. The Wisconsin Administrative Code, §DCF 101.23(9) allows the Department to issue such a warrant if repayment of a W-2 debt is delinquent. The person may appeal the warrant to the Division of Hearings and Appeals, but the only issues that the administrative law judge may review are whether the debt is repaid in full or whether there is mistaken identity. Wis. Adm. Code, §DCF 101.23(9)(a)5.

Because this action occurs after the time for any underlying appeal has passed, the person can only challenge whether the agency has correctly identified her and whether she has been given proper credit for all payments made against the debt. There is no evidence to show that petitioner is not the correct person and it is evident that the debt is still owed. The evidence at the time of hearing shows a total debt for both overpayments as \$5294, plus the service fee for the warrant of \$10. There is nothing in the law preventing the Department from issuing the warrant even if the person is paying the debt through lien, levy or tax intercept.

I must conclude, therefore, that the DCF had authority to issue the warrant. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The Department is authorized to issue the warrant in this case because petitioner has an outstanding W-2 debt and she is the correct person who owes the money.

THEREFORE, it is

ORDERED

That the petition for review 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 28th day of July, 2015

\sKelly Cochran
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 28, 2015.

Wisconsin Works (W-2)
Public Assistance Collection Unit