



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

ATI/166063

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2015, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner's income tax refunds to recover an Aid to Families with Dependent Children (AFDC) overpayment, a hearing was held on June 9, 2015, by telephone.

The issue for determination is whether the Department may continue to recover an old AFDC overpayment.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner formerly received AFDC in Wisconsin. In October, 1994, the agency determined that petitioner was overpaid \$2,290 in AFDC funds for during some prior period, claim no. [Redacted]. The agency then recouped the overpayment for eight months by reducing

petitioner's current AFDC payments. There is no record that petitioner appealed the overpayment claim or that the claim amount was changed.

3. Petitioner moved to Michigan in 1995, and her Wisconsin case closed.
4. In 1997 the agency sent petitioner a repayment agreement, and then three "dunning" notices, to her address in Kalamazoo, Michigan.
5. Petitioner moved back to Wisconsin in approximately 2011. The state agency intercepted her state income refunds (essentially her homestead credits) to recover the overpayment in 2102, 2013, and 2014. Then in May, 2015, the PACU sent petitioner a notice that it would intercept the remaining balance of \$1,261.10.

DISCUSSION

Wis. Stat., §49.85(2)(a), 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 AFDC, general relief benefits, FoodShare, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

Petitioner now claims that she has no idea why the agency sought recovery of an overpayment or even that there was an overpayment. It is acknowledged that the record is incomplete due to the age of the claim, and it is impossible that the claim was for the month of November, 1994 since the claim originated in October, 1994 (I suspect the glitch in the overpayment period is related to a change in the agency computer system in the late 1990s). Nevertheless, it is evident that petitioner was notified of the claim in 1994 because the agency recouped money for it for eight months after the claim was initiated. Notices had to have gone out telling petitioner why her AFDC was being reduced, and there is no record that petitioner contested the claim when it originated.

At this point the record shows the original claim and all payments on it. It is evident, therefore, that petitioner still owes \$1,261.10 on the claim, and the agency is justified in continuing to collect it.

CONCLUSIONS OF LAW

The agency may continue to recover an AFDC overpayment claim that originated in 1994 and which has not been paid back in full.

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 12th day of June, 2015

\sBrian C. Schneider
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 12, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit