



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 16, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency issued a CC overpayment notice on 12/12/14.
3. The agency issued a tax intercept notice on 4/17/15.

4. Petitioner filed a request for hearing on 6/18/15.

DISCUSSION

Wis. Stat. § 49.85, 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 overpayment of general relief benefits, overissuance of food stamps, overpayment of Medical Assistance and child care payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state an income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. See Wis. Stat. § 49.85(3).

There are two problems with petitioner's appeal. First, she did not file it within 30 days of the tax intercept notice. Her appeal was filed almost more than two months after the notice.

Second, the hearing right is described in Wis. Stat., §49.85(4)(b), 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. (Emphasis added)

The Petitioner appeals the overpayment of child care benefits as well as the Department's intent to intercept her income tax refund. The Petitioner has had a prior opportunity for hearing on the merits of the overpayment. Further, I do not have jurisdiction to hear that case on the merits at this time. An administrative law judge (ALJ) can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if the hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the effective date of the negative action, WI Stat § 49.152(1), WI Admin Code §HA 3.05(3), Child Day Care Manual Chapter 2 § 4.0.0. A negative action can be the denial of an application or payment of Child Care Benefits or the finding of an overpayment of that benefit. The petitioner's appeal was filed more than six months after the 12/12/14 overpayment notice. Thus, it is untimely, and no jurisdiction exists for considering the merits of the case.

As an aside, petitioner stated that her only argument on the merits of the overpayment is that it is based on an agency error and was not her fault. But, it makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with other welfare programs such as Food Stamps, an overpayment of Child Care Benefits must be recovered even if it was caused by agency error. See also WI Admin Code §12.23(1)(g), (3)(a). The Department may utilize tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 46.85. Thus, the use of the tax intercept is affirmed.

CONCLUSIONS OF LAW

1. Petitioner's appeals of the tax intercept notice was untimely.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed. [REDACTED]

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 21st day of October, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 21, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit