



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNO/166942

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2015, under Wis. Admin. Code §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) in regard to a lien created due to a child care overpayment, a telephonic hearing was held on July 16, 2015.

The issue for determination is whether the petitioner has exhausted her appeal rights concerning the child care overpayment and whether she has made a payment of this public assistance overpayment debt or the levy is being applied based on a mistaken identity.

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: Keisha Love, CC Subsidy Specialist Adv.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Tennessee, but formerly resided in Wisconsin and received child care benefits (CCB) from at least 9/5/04-9/3/05.

2. On October 4, 2005, the agency issued a CCB Overpayment Notice, with worksheets showing the calculations, to the petitioner informing her it had determined that she had been overpaid \$16,690.68 in CCB benefits in the period of 9/5/04-9/3/05 (claim # [REDACTED]). Petitioner did not appeal that notice.
3. On November 2, 2005, 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 December 2, 2005, January 4, 2006, and February 2, 2006.
5. Payments have been made on claim # [REDACTED] in the amount of \$2634.30 as of the date of hearing.
6. On June 4, 2015, the Department of Children and Families (DCF) issued a Notice of Warrant Docketed in Milwaukee 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 \$14,066.38, arising from the CCB overpayment and the service fee for the warrant.
7. On June 24, 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 like CCB, the DCF 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 DCF to issue such a warrant if repayment of a CCB 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 overpayment appeal has passed, the petitioner can only challenge whether the agency has correctly identified her as the debtor 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 payments have been made on claim # [REDACTED] in the amount of \$2634.30 as of the date of hearing. There is nothing in the law preventing the DCF from issuing the warrant even if any responsible debtor 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.

Petitioner can still contact the PACU to see if a repayment agreement can be established to repay the debt, if the funds have not already been recovered.

CONCLUSIONS OF LAW

1. There is no jurisdiction to consider the merits of the child care overpayment as the petitioner had an opportunity for a hearing on the matter, but she did not timely appeal from the original overpayment notices.

2. The lien is being applied against the correct individual and there is no evidence that the DCF is not pursuing the correct amount of the debt.
3. The DCF acted correctly in instituting lien proceedings against the petitioner since the petitioner has not already made a prior full repayment of her child care overpayment.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 3rd day of September, 2015

\sKelly Cochrane
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 September 3, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit