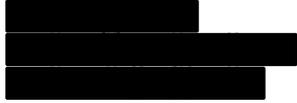




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LNP/167051

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on August 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the Public Assistance Collection Unit (PACU) docketing a warrant against her to recover a Wisconsin Shares overpayment is timely.

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: James Price

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Florida.
2. On March 27, 2015 the Public Assistance Collection Unit (PACU) sent the petitioner a notice stating that she had a delinquent debt in the amount of \$43,169.06, and that a warrant had been

- docketed against her in Milwaukee County. The notice went on to state that she had 21 days from the date of the notice to request a fair hearing with the Division of Hearings and Appeals.
3. On June 6, 2015 the Division of Hearings and Appeals received the petitioner's Request for fair hearing.
 4. Prior to docketing a warrant against the petitioner, the PACU sent the petitioner a notice of overpayment, a repayment agreement on December 4, 2012, dunning notices on January 3, 2013, February 4, 2013, and March 4, 2013, and a notice prior to levy payment demand on September 6, 2013.
 5. The petitioner appealed the underlying overpayment in case number [REDACTED]. She filed her appeal in that case on January 28, 2011. That case was assigned to ALJ Fleming. ALJ Fleming scheduled two telephone prehearing conferences, and a hearing. The petitioner had contact with the Division of Hearings and Appeals prior to the scheduled hearing date. On the scheduled hearing date, which was subsequently changed to a status date, ALJ Fleming attempted to contact the petitioner several times at the number she provided. She never returned the calls, and had no contact with the Division of Hearings and Appeals between May 26, 2011 and ALJ Fleming's dismissal decision issued on August 21, 2012.

DISCUSSION

When a child care provider is subject to a specified overpayment of public assistance the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 201.04(5). One method of collection that the department may utilize is the use of a warrant under Wis. Stat., §49.195 (3m). Wis. Admin. Code, §DCF 201.04(5)(eh)1.a provides as follows: "If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county." Any debtor who is subject to a warrant has the right to appeal the proceeding under chapter 227 of the Wisconsin Statutes. A person has 20 days from the date on the service of levy to file an appeal. §DCF 201.04(5)(eh)1.e. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. *Id.* The warrant is not withdrawn pending an appeal. *Id.*

In this case the petitioner's appeal is not timely. On March 27, 2015 the PACU sent the petitioner a notice stating that she had a delinquent debt in the amount of \$43,169.06, and that a warrant had been docketed against her in Milwaukee County. 20 days from March 27, 2015 is April 16, 2015. 21 days is April 17, 2015. The Division of Hearings and Appeals did not receive the petitioner's request until July 6, 2015. This is well beyond the petitioner's appeal deadline, and I am without jurisdiction to hear the appeal. I further note that March 27, 2015 was sent to the address that the petitioner confirmed as her correct address during the hearing.

Even if I had jurisdiction, I would dismiss the petitioner's appeal. The petitioner seeks to challenge the underlying overpayment. She argues that her mother, FI, opened a daycare in her name. She did not receive the daycare payments, and was not aware of the overpayment. Ultimately her mother was prosecuted in Circuit Court, and ordered to pay restitution. I note that I do not find this petitioner credible. The petitioner conveniently stated that she did not receive notices, which were sent to addresses that she verified. She testified to this information at a very convenient time. Her testimony appeared to be largely self-serving. In addition the petitioner testified that her mother told her that she was starting a daycare in her name, but that she never ran the daycare. Implicit in this testimony is that the petitioner's consented to this use of her name and information.

The time to challenge the underlying overpayment was in 2011. The agency mailed the overpayment notice to the petitioner, and the petitioner timely requested a hearing on January 28, 2011. That case was pending with the Division of Hearings and Appeals until August 21, 2012 when ALJ dismissed the appeal for the petitioner's failure to prosecute. The petitioner contacted ALJ Fleming to reschedule one date. ALJ Fleming then contacted the petitioner at the rescheduled date and time. She did not answer her phone, and never called back to explain her non-appearance. She then had no further contact with the Division of Hearings and Appeals until her request for fair hearing on the levy. Thus, even if her appeal of the warrant docketed against her in Milwaukee County was timely, I would still be without jurisdiction to decide the underlying overpayment.

CONCLUSIONS OF LAW

The petitioner's appeal of the Public Assistance Collection Unit (PACU) docketing a warrant against her to recover a Wisconsin Shares overpayment is untimely.

THEREFORE, it is

ORDERED

That the petition 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 31st day of August, 2015

\sCorinne Balter
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 August 31, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit