



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/167081

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 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 27, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely with respect to notices of child care overissuance and as to a tax intercept notice.

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

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. Petitioner was sent two Child Care Overpayment Notifications, one manually generated and dated September 11, 2012 and the other computer generated and dated September 12, 2012. Both informed Petitioner that she has been overissued child care benefits in the amount of \$1905.40 for the period from April 23, 2012 through May 18, 2012. The notices were sent to Petitioner at the correct address at the time. The notices do contain appeal instructions and note a 45 day time limit for filing an appeal with the Division of Hearings and Appeals.
3. A repayment agreement dated October 2, 2012 sent to Petitioner at the correct address at the time.
4. Petitioner was sent a tax intercept notice, dated December 14, 2012, which informed her that any tax refunds owed Petitioner would be subject to intercept to repay the \$1905.40. That notice was sent to Petitioner at the correct address at the time. It contained appeal instructions and noted that the appeal had to be filed within 30 days of the date of the notice. It also states that there is no right to a hearing for an issue for which there was a prior right to a hearing.
5. This appeal was filed with the Division of Hearings and Appeals on July 7, 2015.
6. By the time of this appeal collection efforts had reduced the amount owed by Petitioner \$1133.40.

DISCUSSION

The first question is whether Petitioner's appeal is timely with respect to the September 2012 overpayment notices. In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3).*

Here the September 2012 notifications of overissuance were sent to Petitioner at the correct address. Those notices did contain appeal instructions that informed Petitioner that the time limit for filing an appeal to contest the overissuance was 45 days. No appeal was received by the Division of Hearings and Appeals. Thus this appeal is untimely as to the original notices of overpayment. I also note that a repayment agreement was sent to Petitioner at the correct address. These did not trigger an inquiry from Petitioner as to the overpayment and what to do about it.

As for the tax intercept notice, Petitioner's appeal is also untimely. Petitioner was aware that her taxes were being intercepted but thought it was for unpaid parking tickets.

Finally, at the hearing, Petitioner indicated that she also had a notice of levy. From what little was known about it at the hearing it appeared that it was filed by the State after this hearing was requested. Petitioner was informed to file a second appeal concerning the levy. Post hearing I did contact the Public Assistance Collection Unit to see if there was a levy and, if so, when it was issued. I was informed that a levy was issued on July 21, 2015, Again, this was after the date of this hearing request.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is untimely as to the September 2012 notices of child care overpayment.
2. That Petitioner's appeal is untimely as to the December 2012 tax intercept notice.

Now therefore, it is

ORDERED

That this appeal 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.

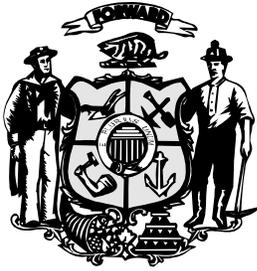
APPEAL TO COURT

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 13th day of November, 2015

\sDavid D. Fleming
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 November 13, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit