



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

LVO/169408

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 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 November 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency may utilize a levy to collect the overpayment.

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: Jashema Wallace

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 Milwaukee County.
2. The petitioner received child care assistance in 2014. By a notice dated March 4, 2015, the agency informed the petitioner that she was overpaid \$370.40 in assistance from May 25, 2014 to July 31, 2014. The petitioner did not appeal.

3. The agency sent the petitioner “dunning notices” on May 4, 2015, June 2, 2015, and July 2, 2015. All of these notices reminded the petitioner that she still owed the overpayment.
4. By a notice dated September 24, 2015, the agency informed petitioner that it would be imposing a levy on her wages to recover the overpayment. The petitioner filed this appeal.
5. On October 14, 2015 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to child care assistance) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Adm. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Adm. Code, §DCF 101.23(10)(b) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice, and the March 4, 2015 overpayment notice informed petitioner of the limit. Once the time limit for appealing is past, the person no longer can appeal whether she owes the amount.

The petitioner did not argue that there was a mistaken identity or that she paid the debt. Rather, she argued that her child never attended the childcare center. The childcare center was at a [REDACTED] site. The agency testified that this childcare site billed, and that they paid for the petitioner’s child to attend childcare during the overpayment period. Ultimately the time to contest the underlying overpayment was in March of 2015 when the agency sent the petitioner the first notice of overpayment. That notice was sent the same address as the levy notice and dunning notices. This address remains the petitioner’s current address. Because the petitioner is not alleging a mistaken identity or that she paid the debt, I must find that the levy was imposed correctly.

CONCLUSIONS OF LAW

The agency may utilize a levy to collect the overpayment.

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.

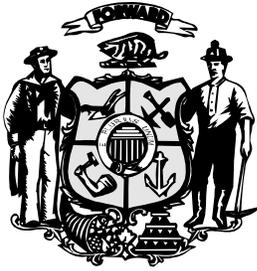
APPEAL TO COURT

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 8th day of January, 2016

\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 January 8, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit