



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/170392

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on January 14, 2016, at New Richmond, Wisconsin.

The issue for determination is whether the department may intercept the petitioner’s income tax refund to recover an alleged overpayment of childcare benefits.

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: 
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of St. Croix County.
2. The Department notified the petitioner on June 23, 2014, that it was seeking to recover \$3,264.99 in Child Care payments made on her behalf from February 9, 2014, through April 30, 2014,

because she received those benefits while children's was unemployed and living with her. She did not appeal this action.

3. The Department sent the petitioner a repayment agreement on July 2, 2014. It then sent her dunning notices requesting payment on August 4, 2014, September 3, 2014, and October 2, 2014. She did not respond to any of these.
4. The Department notified the petitioner on November 14, 2015, that it intended to intercept her tax refund to recover the Child Care overpayment.

DISCUSSION

The Department may intercept a recipient's state income tax refund to recover an overpayment of Child Care benefits. *See* § 49.85. The Department of Children and Families must certify any amount of benefits it is entitled to recover to the Department of Revenue at least once a year. Wis. Stat. § 49.85(2)(a). The petitioner's right to a hearing 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.

The Department notified the petitioner on June 23, 2014, that it was seeking to recover \$3,264.99 in Child Care payments made on her behalf because she received benefits while the father of her children was unemployed and living with her. She did not appeal this action. It then sent her a repayment agreement on July 2, 2014. This was followed by dunning notices requesting payment on August 4, 2014, September 3, 2014, and October 2, 2014. She did not respond to any of these.

Child Care recipients must appeal negative decisions within 45 days. Wis. Admin. Code § HA 3.05(3). The petitioner filed her only appeal concerning these benefits on November 24, 2015, or more than a year after the agency sent her its fifth notice concerning the overpayment. She had an opportunity to appeal the alleged overpayment but did not exercise it. Because she has had a prior opportunity for a hearing on the overpayment, that issue is excluded from this hearing, and I assume that the agency's overpayment claim is valid. The agency properly notified her that her tax refund would be certified to the Department of Revenue for interception to recover that overpayment. Therefore, the respective Departments can take the actions discussed in this decision.

CONCLUSIONS OF LAW

The Department may intercept the petitioner's state income tax refund to recover the \$3,264.99 overpayment of Child Care benefits made on her behalf from February 9, 2014, through April 30, 2014, because she never appealed the underlying overpayment.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 3rd day of March, 2016

\sMichael D. O'Brien
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 March 3, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit