



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2015, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to impose a levy to collect a child care overpayment, a hearing was held on December 22, 2015, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
1220 W. Vliet St., 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care assistance in early 2015. By a notice dated May 20, 2015, the agency informed petitioner that she was overpaid \$2,244.21 in assistance from January 18 through March 31, 2015, claim no. [REDACTED]. Petitioner did not appeal.
3. The agency sent a series of “dunning” notices to petitioner in the months after reminding her of the overpayment.

4. By a notice dated November 4, 2015, the PACU informed petitioner that it would be imposing a levy on her wages to recover the overpayment. Petitioner filed this appeal.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) 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. Admin. 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. Admin. 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 May 20, 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.

Petitioner testified that she received none of the notices. However, even if she did not, she admitted that she used child care when she was unemployed and not participating in W-2. A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, §2.1.5.1. Petitioner testified that she was unaware that she could not use child care services during the period in question, but lack of knowledge is not a basis for overturning an overpayment.

Petitioner did not argue that there was mistaken identity or that she paid the debt. I thus must find that the levy was imposed correctly. At this point only the PACU can change the method of collection, so petitioner should contact that agency.

CONCLUSIONS OF LAW

Petitioner’s appeal of the PACU’s levy is limited to questions of prior payment and mistaken identity, and she has established no basis for remand of the levy.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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.

[REDACTED]

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 4th day of January, 2016

\sBrian C. Schneider
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 4, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit