



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

WTI/170604

PRELIMINARY RECITALS

Pursuant to a petition filed December 2, 2015, under Wis. Stat. § 49.85(4), to review a decision by the America Works of Wisconsin, Inc. ["AWW"] in regard to Wisconsin Works ["W-2"], a Hearing was held via telephone from Madison, Wisconsin on January 5, 2016.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following W-2 overpayment Claim: Claim # [redacted]; October 16, 2014 to December 31, 2014; \$870.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: [redacted], Quality Assurance Manager
Wisconsin Works (W-2)
America Works of Wisconsin, Inc.
1915 North Dr. Martin Luther King, Junior Drive
Milwaukee, Wisconsin 53212

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The Wisconsin Department of Children and Families ["DCF"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following W-2 overpayment Claim: Claim # [REDACTED]; October 16, 2014 to December 31, 2014; \$870.00. Exhibits A & B.
3. In regard to the overpayment identified in *Finding of Fact #2*, above, petitioner received a written W-2 overpayment notice entitled *Wisconsin Works (W-2) Overpayment Notice* dated June 26, 2015; that W-2 overpayment notice explained the overpayment and how petitioner could file an appeal (i.e. a fact finding review), including the 45-day time limit for filing an appeal. Exhibits A & B.
4. Petitioner never filed an appeal in response to the June 26, 2015 W-2 overpayment notice.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."

Wis. Stat. § 49.85(4) (2013-14).

Petitioner received a written W-2 overpayment notice which explained the overpayment and how petitioner could file an appeal -- but never filed an appeal. Thus, petitioner had a prior opportunity to contest the overpayment listed in *Finding of Fact #2*, above. It follows that petitioner may not now contest the merits of the W-2 overpayment. It is noted that, had petitioner appealed by requesting a fact-finding review, she could have also had a Hearing if the result of the fact finding review was not in her favor. See, Wis. Stat. §§ 49.152(1)(b) & (c) (2013-14).

Petitioner testified that she did everything she was supposed to do. This overpayment is an agency error overpayment due to the fact that the agency failed to budget earned income. It was not petitioner's fault. Nevertheless, petitioner must still repay the overpayment. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code §§ DCF 101.23(1)(a), (g) & (3)(c) (October 2015); See also, Wis. Admin. Code § DCF 201.04(5)(a)1. (February 2016). A W-2 overpayment is any W-2 benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (October 2015); *Wisconsin Works (W-2) Manual*

10.3.1. Therefore, petitioner is liable for the W-2 overpayment in this matter even though it was not her fault.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the W-2 overpayment Claim identified in *Finding of Fact #2*, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$870.00 and that amount may be applied against the W-2 overpayment Claim identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED; DCF may certify the amount of \$870.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the W-2 overpayment Claim identified in *Finding of Fact #2*, above.

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 15th day of March, 2016

\sSean P. Maloney
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 15, 2016.

Wisconsin Works (W-2)
Public Assistance Collection Unit