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**State of Wisconsin
Governor Scott Walker**

TO: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Job Center Leads and Managers
Training Staff
Child Care Coordinators

FROM: Jim Bates, Director
Bureau of Child Care Administration
Division of Early Care and Education

DFES OPERATIONS MEMO					
No: 11-24					
DATE: 5/9/2011					
FS	<input type="checkbox"/>	MA	<input type="checkbox"/>	BC+	<input type="checkbox"/>
SC	<input type="checkbox"/>	CTS	<input type="checkbox"/>	CC	<input checked="" type="checkbox"/>
W-2	<input checked="" type="checkbox"/>	FSET	<input type="checkbox"/>	EA	<input type="checkbox"/>
CF	<input type="checkbox"/>	JAL	<input type="checkbox"/>	JC	<input type="checkbox"/>
RAP	<input type="checkbox"/>	WIA	<input type="checkbox"/>	Other	<input type="checkbox"/> *
				EP	
PRIORITY: HIGH					

SUBJECT: Local Agency Procedures for the Appeal Process Relating to Collections

CROSS REFERENCE: s.49.155(7)(m)- Penalties, s.49.85- Certification of certain public assistance overpayments and delinquent loan repayment, DCF 201.04(5)(b)- Provider overpayments and Child Care Manual Chapter 2

EFFECTIVE DATE: Immediately

PURPOSE

This Operations Memorandum describes the policy and procedures for local agencies to follow relating to the collections appeal process for delinquent provider overpayments.

BACKGROUND

The Department and county/tribal child care administrative agencies are responsible for establishing overpayment amounts for child care providers whether the overpayment is due to agency error, provider error or fraud. The overpayment amount is established in CSAW whether the provider is active, inactive or permanently suspended from the Wisconsin Shares program.

In March, the Department referred over 300 inactive and delinquent child care providers to the Department's Public Assistance Collection Unit (PACU) to begin the collections process on outstanding overpayments. PACU is the State's central collection section for the recovery of delinquent public assistance overpayments. The overpayment amounts for these providers were established by the local child care agencies.

These providers meet the definition of an inactive provider. The definition of an inactive provider for recovery is:

- a. Have not received payments at any location for the past 6 weeks, and
- b. Do not have any special payments outstanding, and
- c. Do not have any open authorizations against which attendance can be logged for the past 6 months, and
- d. Do not have any attendance that is yet to be paid.

These inactive providers have been referred to the benefit recovery (BV) system in CARES. CARES determines delinquency which is defined as 3 missed payments over the life of the debt. The missed payments are documented by a series of 3 dunning notices. Once delinquent, the provider overpayments are referred to the Central Recoveries Enhanced System (CRES) for further collection action including levy, lien and state tax offset.

Collections Processes

Levy Process

1. **Notice Prior to Levy (NPL):** PACU sends a NPL by certified mail to the provider. This notice is a demand for payment in full within ten days and a notification that further legal action is intended to collect the debt.
2. **Levy Issuance:** If an employer match is found, and no acceptable arrangements have been made, a levy notice is sent by PACU via certified mail to the employer. A copy of the levy is also sent by certified mail to the debtor's last known address. The levy notice contains the debtor's administrative hearing rights on the levy action along with instructions for how to request a hearing. The debtor has 21 days to request a hearing on the levy action through the Division of Hearings and Appeals (DHA). If the debtor is granted a hearing, the levy action will continue throughout the hearing process.

A levy is an involuntary collection from a 3rd party, such as an employer or financial institution, holding a debtor's earnings or property (similar to a garnishment action). PACU is allowed by Wisconsin statute to levy any amount over \$1,000 from an account at a financial institution and/or up to 25% of a client's disposable wage earnings to repay a delinquent child care provider debt. Any debt referred for levy action must be a minimum of \$300.

DOR Tax Offset

If a provider debt is considered delinquent, the debt is certified to the Department of Revenue (DOR) to offset tax refunds and/or credits. The debtor is sent a notice 30 days prior to certification of an amount that the department has determined to be an overpayment and that the department intends to recover. The notice informs the debtor that the Department intends to certify the overpayment or delinquent amount to the DOR and that the debtor has 30 days from the date of the letter to request an appeal.

If the debtor requests an appeal, the Department **will not** certify the amount to the DOR during the appeal process. The certified amount represents the total outstanding balance due, and the certification will remain until the debt(s) are paid in full. If the debtor requests an appeal, the appeal is limited to prior payment and/or mistaken debtor identity.

If the debtor has filed for bankruptcy or if the claim has been discharged due to bankruptcy, the debtor must inform the Department.

Lien

Another collection method used is to issue a warrant which becomes a perfected lien on real and personal property such as a home. The overpayment amount must be over \$300 in order for a warrant/lien to be issued and is only valid in the county or tribe where the warrant is docketed. The debtor has 21 days from the date of the notice to request an appeal, which is limited to prior payment and mistaken debtor identity. If the debtor requests an appeal, the warrant will remain in effect during the appeal process. When the amount in the warrant and all costs due the Department have been paid, the Department shall issue a 'satisfaction of the warrant' which states the outstanding balance has been paid in full.

Timelines

NPL's are only generated at the beginning of the each month. On April 5th, 2011, NPL's were sent to the first 200 inactive child care providers. If the provider is currently employed and meets all the guidelines, the Department served them with a levy notice in late April in which they have 21 days to request an appeal.

To date, no warrants have been issued on the claims for these 200 providers.

APPEAL PROCESS**Roles and Responsibilities of Local Agencies and DCF**

In overpayment cases, the county or tribe that established the overpayment will be responsible for handling the appeal process.

The documents that will be submitted as exhibits for these hearings are:

- Calculation of the overpayment
- Original overpayment notice which includes the provider's hearing rights
- The letter of decision from DHA if there was a hearing
- Three (3) dunning notices from the benefits recovery (BV) system
- Repayment agreement (RPA), if one exists
- Delinquency collection notice(s)- notice prior to levy, levy notice, DOR certification notice to tax refunds or credits, and notice of warrant docketed

PACU will provide the agency with copies of the appropriate delinquency collection action notices. If you have not received the documentation prior to the hearing, please contact PACU at 1-800-943-9499.

The Administrative Law Judge (ALJ) should limit all of these collection hearings to questions of procedure, prior payment and/or mistaken debtor identity; however, under certain circumstances the ALJ may decide to review the underlying merits of the overpayment. Therefore, the agency must be prepared to defend the original overpayment determination as well as the collection action.

The Department's PACU will receive all requests for collection related appeals and will forward the Request for Summary to the local agency. The agency must complete the Request for Summary and return it to DHA. DHA will then process the appeal and notify the agency of the scheduled hearing date and time.

CONTACT

Please email questions to: Marcie Stebbeds, marcie.stebbeds@wisconsin.gov
PACU Contact: 1-800-943-9499 or dwspace@wisconsin.gov

*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – FoodShare Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, *Other EP – Other Employment Programs.
DCF/DFES/BWF/scm