

DEPARTMENT OF CHILDREN  
AND FAMILIES  
Secretary Eloise Anderson  
201 East Washington Avenue, Room G200  
P.O. Box 8916  
Madison, WI 53708-8916  
Telephone: 608-422-7000  
Fax: 608-266-6836  
www.dcf.wisconsin.gov



State of Wisconsin  
Governor Scott Walker



TO: **Income Maintenance Supervisors**  
**Income Maintenance Lead Workers**  
**Income Maintenance Staff**  
**W-2 Agencies**  
**Training Staff**  
**Child Care Coordinators**

FROM: Junior Martin, Director  
Bureau of Program Integrity  
Division of Early Care and Education  
Department of Children and Families

Margaret McMahon, Director  
Bureau of Working Families  
Division of Family and Economic Security  
Department of Children and Families

**BWF/BPI OPERATIONS MEMO**

No: 18-J5

DATE: 06/12/2018

CC	<input checked="" type="checkbox"/>	W-2	<input checked="" type="checkbox"/>	EA	<input type="checkbox"/>
CF	<input type="checkbox"/>	JAL	<input checked="" type="checkbox"/>	RAP	<input type="checkbox"/>
Other EP	<input type="checkbox"/> *				

**SUBJECT: *Wisconsin Works and Child Care Delinquency Hearing Process***

**CROSS REFERENCE:** [Wis. Stat. §.49.195 \(3m\)-\(3n\)](#)  
[Wis. Stat. §.49.855](#)  
[Wis. Stat. §227.43](#)  
[DCF 101.23 \(9\)-\(10\)](#)  
[DCF 201.04\(5\) \(eh\)-\(ep\)](#)  
[DCF 201.065](#)  
[W-2 Manual Section 12.4.1](#)  
[W-2 Manual Section 12.4.2](#)  
[Wisconsin Shares Child Care Program Integrity](#)  
[Policy Manual 4.6.2.5 and 4.12.3](#)

**EFFECTIVE DATE:** Immediately

**PURPOSE**

The purpose of this memo is to announce the new policies for delinquency hearings relating to Child Care (CC) programs and Wisconsin Works (W-2) programs, including Job Access Loan (JAL) and Aid to Families with Dependent Children (AFDC).

## **BACKGROUND**

The Public Assistance Collection Unit (PACU) has the primary responsibility of providing collection and debt management services for overpayments of public assistance payments. PACU utilizes and initiates various collection methods to recover overpayments, including liens, levies, and tax intercepts, which are known as delinquency collection actions:

- Liens are docketed against a debtor's real and personal property, such as a home, to secure the state's interest;
- Levies are issued against all real and personal property, including wages or bank accounts; and
- Tax interceptions are issued against the debtor's state tax refunds or credits.

Each collection method initiates a new set of appeal rights through the Department of Hearings and Appeals (DHA) for each liable debtor. Agencies that establish overpayments are currently required to appear at the delinquency hearings to defend these collection actions. PACU will now appear, defend the lien and levy delinquency actions for the CC, W-2, and AFDC programs, as PACU is the agency defending the action under appeal. The Department of Children and Families (DCF) Office of Legal Counsel (OLC) will now appear and defend tax intercept delinquency actions, as these delinquency hearings are considered contested hearings.

Administrative Law Judges (ALJ) will often expand delinquency hearings to discuss the merits of an overpayment and other unrelated delinquency collection actions. This may cause confusion for the agency representative, program participant, and the ALJ, or introduce new issues that are unrelated to the delinquency hearing.

## **POLICY**

### CURRENT POLICY

A program participant can appeal a delinquency collection action by requesting an appeal through DHA. A delinquency hearing allows the participant an opportunity to dispute a particular collection action, but is limited to:

- Questions of prior payment of the debt; and
- Mistaken identity of the debtor.

### Current Role of CC and W-2 in Delinquency Hearings

CC and W-2 agencies currently provide DHA with all exhibits and appear at the delinquency hearing to defend the delinquency collection action. The agency must provide the certification of compliance to DHA when the agency takes the action to comply with the decision.

### Current Role of PACU in Delinquency Hearings

PACU's current role is to help agencies obtain proper notice of the delinquency action and review DHA decisions for policy adherence. If DHA issues a remand decision, PACU provides the certificate of compliance to DHA as they take action to comply with the decision.

NEW POLICYNew Role of CC and W-2 Agencies in Delinquency Hearings

The CC and W-2 agencies are no longer required to prepare exhibits or defend a delinquency collection action. Certain circumstances will require PACU to seek agency assistance in obtaining documents to support the collection action that are not readily available.

It is not uncommon for a debtor to raise issues relating to the underlying merits of the overpayment. While these issues are not properly considered at collection hearings, ALJs sometimes allow them to be discussed. Moreover, by the time a debt is considered delinquent, time limits for raising the merits of the overpayment have likely passed. When issues related to the merits of an overpayment are introduced at a delinquency hearing for a CC, W-2, JAL, or AFDC program, the following actions will take place:

- For the Child Care program (client and provider hearings) as well as the AFDC program, PACU will request that DHA reschedule a separate merit hearing. PACU will alert the debtor and the ALJ that time limits for appealing the merits have likely passed. DHA will notify local agencies via email of the merit hearing. The local agency will follow the current procedure for CC merit hearings, including filing motions to dismiss if the appeal was filed untimely. Information of CC appeal process can be found in the [Shares Policy Manual](#), chapter 4.5.7 for clients and 4.11.4 for providers.
- For the W-2 related programs, PACU will collaborate with the W-2 agency prior to the delinquency hearing to determine if a fact-finding review took place on that claim. If there was a fact-finding decision made prior to the delinquency hearing, PACU will request the delinquency hearing be rescheduled to a departmental review. The local agency will follow the current procedure for departmental reviews in 12.3 of the [W-2 Manual](#). If there was no fact-finding review prior to the delinquency hearing, PACU will request to refer the issue back to the agency for a fact-finding review. The local agency will follow the current procedures in the [W-2 Manual, 12.2.5 Fact Finding Review](#). If the time limits for either a fact-finding review or a departmental review have passed, the local agency will file a motion to dismiss.

If a merit hearing or departmental review already occurred on the CC, W-2, JAL, or AFDC related claim, PACU will provide that information at the time of the delinquency hearing and will request no additional hearing to be scheduled.

When a CC, W-2, JAL, or AFDC merit hearing or departmental review results in the need to address a delinquency collection action, the agency should request to reschedule the merit hearing to a separate delinquency hearing. Local agencies are not expected to defend collection actions; PACU is not in a position to defend local agency decisions and overpayments.

PACU'S NEW ROLE FOR LIEN AND LEVY DELINQUENCY COLLECTION ACTIONS

PACU will prepare all exhibits, and defend all lien and levy collection actions at delinquency hearings for the CC, W-2, and AFDC programs. Liens or levies are not legally authorized methods of collection for the JAL program. This change will ensure consistency and accuracy in the evidence provided as it relates to these collection activities. PACU's appearance will allow for a uniform process and a primary point of contact for DHA.

When a program participant appeals a lien or levy collection action through DHA, PACU and the local agency that established the claim will continue to receive the hearing notice via email. The local agency does not need to take any action. PACU will take the following actions:

- Prepare and provide DHA with all exhibits;
- Appear at the hearing and defend the lien and/or levy collection action;
- Review decisions for policy adherence;
- Comply with the hearing decision; and
- Provide the certification of compliance to DHA.

### New Roles for Tax Intercept Delinquency Collection Actions

When a program participant appeals a tax intercept action through DHA for CC, W-2, JAL, or AFDC, the Department of Children and Families (DCF) Office of Legal Counsel (OLC) will appear and defend the tax interception delinquency collection action. DHA will notify PACU of the request via email and PACU and OLC will take the following actions:

- OLC will prepare and provide DHA with all exhibits;
- OLC will appear at the hearing and defend the tax intercept action;
- PACU will assist OLC with gathering documentation for exhibits;
- PACU will provide testimony to support the collection action;
- PACU will comply with the hearing decision action; and
- PACU will complete and provide a certification of compliance to DHA.

*Delinquency hearing types that are subject to the new policy:*

- Levy hearings for the W-2, AFDC, CC Client programs(LVO);
- Lien hearings for the W-2, AFDC, CC Client programs (LNO);
- Lien hearings for CC Providers (LNP);
- Levy hearings for CC Providers (LVP);
- Tax Intercept hearings for W-2, AFDC, CC Client programs (CTI); and
- Tax Intercept hearings for CC Providers (PTI).

### **CARES Worker Web (CWW)**

There are no changes to CWW.

### **AGENCY ACTION**

Review and follow the new process as of the effective date of this memo.

### **ATTACHMENTS**

[W-2 Manual, Section 12.4.1 Administrative Hearings for Delinquency Collection Actions](#)  
[W-2 Manual, Section 12.4.2 Role of the W-2 Agency in Administrative Hearings for Delinquency Collections Actions](#)

### **CONTACTS**

For W-2 Policy Questions in the Balance of State: Bureau of Regional Operations, W-2 Regional

Coordinators

For W-2 Policy Questions in Milwaukee: Milwaukee Operations Section Regional Administrators

For W-2 CARES Processing Questions: W-2 Help Desk

For Investigation Support, Retractions, Voluntary Repayment Agreements, Overpayment Questions, Program Integrity Systems Issues, and Fraud Plans, please contact the Bureau of Program Integrity (BPI) at <https://dcf.wisconsin.gov/progintegrity/bpi-technical-assistance-form>

For Wisconsin Shares Child Care Chapter 3 and 4 policy questions outside of Milwaukee County contact the Bureau of Regional Operations (BRO) Child Care Policy Help Desk at [BROCCPolicyHelpDesk@wisconsin.gov](mailto:BROCCPolicyHelpDesk@wisconsin.gov).

For referrals regarding alleged client or provider child care fraud or other program integrity concerns, please submit a referral to the Child Care Fraud Mailbox at [DCFMBCHILDCAREFRAUD@wisconsin.gov](mailto:DCFMBCHILDCAREFRAUD@wisconsin.gov).

For Child Care CARES/CWW, CSAW and CCPI processing questions statewide and policy questions in Milwaukee County, contact the Child Care Subsidy and Technical Assistance line at [childcare@wisconsin.gov](mailto:childcare@wisconsin.gov) or 608-422-7200.

Local agencies seeking technical assistance in preparing Motions to Dismiss for Child Care and W-2 cases may contact Attorney Nancy Wettersten, DCF Office of Legal Counsel, 608-422-7047 or [nancy.wettersten@wisconsin.gov](mailto:nancy.wettersten@wisconsin.gov).

DCF/DFES/BWF/TT  
DCF/DECE/BPI/MSE