



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/170292

PRELIMINARY RECITALS

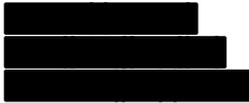
Pursuant to a petition filed November 20, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on December 15, 2015, at Kenosha, Wisconsin. The matter was held open 10 days following the hearing for additional evidence from the Petitioner regarding his residence. No additional evidence was submitted and the record was closed on December 25, 2015.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a state tax intercept notice to the Petitioner for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The Petitioner and [REDACTED] have two children in common, one born in September, 2012 and the other born in or about September, 2013. On January 19, 2012, [REDACTED] submitted an application for healthcare benefits to the agency. She reported the Petitioner as the father of her unborn child. She did not report the Petitioner as part of the household.
3. On February 2, 2012, the Petitioner applied for FS. She reported that she lived with her mother but ate separately from her mother. She also reported that she was pregnant with a due date in September, 2012.
4. On April 16, 2012, May 14, 2012 and June 19, 2012, [REDACTED] reported to the agency that she was homeless.
5. On April 27, 2012, the Petitioner received a traffic citation and reported an address on [REDACTED] in Kenosha. On April 30, 2012, [REDACTED] was charged in a circuit court case and reported the same address on [REDACTED] in Kenosha.
6. On June 21, 2012, the Petitioner and [REDACTED] signed a lease for the apartment on [REDACTED] in Kenosha. The lease term was July 1, 2012 – June 30, 2013.
7. On July 3, 2012, [REDACTED] reported to the agency that she had moved into a residence and was living alone.
8. On September 18, 2012, Petitioner's and [REDACTED]'s daughter was born and on September [REDACTED], 2012, the child was added to [REDACTED]'s FS case.
9. On or about December 17, 2012, [REDACTED] completed a FS renewal. No changes were reported in household composition or household income.
10. From April, 2012 – June, 2013, the Petitioner was charged or named in numerous court actions. He reported his address as [REDACTED] to the court in each action.
11. From December, 2012 – February, 2014, [REDACTED] was charged or named in numerous court actions. She reported her address as [REDACTED] to the court in each action.
12. On December 12, 2012, [REDACTED] signed a mandatory paternity interview form and reported that she and Petitioner resided together at [REDACTED] in Kenosha.
13. On April 4, 2013, [REDACTED] reported to the agency that she was four months pregnant and living with her daughter at a woman's shelter. On April 15, 2013, [REDACTED] reported to the agency that the Petitioner is the father of her daughter and unborn child.
14. On June 24, 2013, [REDACTED] submitted a Six Month Report Form to the agency on which reported that she lived on [REDACTED] in Kenosha with her daughter. She did not report the Petitioner in the household.
15. On December [REDACTED], 2013, [REDACTED] submitted a FS renewal to the agency and reported she was living on [REDACTED], in Kenosha. She reported a household of three including herself and her two children.
16. On August 5, 2014, [REDACTED] admitted to an agency investigator that the Petitioner lived with her on [REDACTED] in Kenosha off and on from July, 2012 – November, 2013. She reported that he kept his personal belongings at her house at all times.
17. On August 25, 2014, the agency issued a FS Overpayment Notice and worksheets to the Petitioner on [REDACTED] [REDACTED] in Kenosha informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$3,850 for the period of December 1, 2012 – November 30, 2013 based on Petitioner's and [REDACTED]'s failure to accurately report household composition and income. The notice also advised the Petitioner of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals by November 24, 2014.
18. In 2015, Petitioner had court proceedings in Kenosha. He reported the [REDACTED] address to the court.

19. On October 2, 2014, November 4, 2014 and December 2, 2014, the agency issued dunning notices to the Petitioner at his father's address on [REDACTED] in Kenosha.
20. On January 16, 2015, the agency issued a notice of state tax intercept to the Petitioner informing her that the agency may intercept state taxes as a result of her unpaid public assistance debt. The notice also informed her of the right to a hearing by filing an appeal with the Division of Hearings and Appeals within 30 days of the date of the notice.
21. On November 20, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

At the outset it should be noted that all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. FSH, §7.3.1.2. This explains why Petitioner and [REDACTED] both received overpayment notices. The agency concluded, based on evidence gathered during its investigation as noted in the findings of fact above, that the Petitioner and [REDACTED] resided together for the period of December 1, 2012 – November 30, 2013.

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). Petitioner's November 20, 2015 appeal was filed almost 15 months after the August 2014 overpayment notice. I conclude, based on the evidence, that the agency properly mailed the overpayment notice to the Petitioner's last-known address. Thus the appeal is untimely as to that overpayment notice.

With regard to the tax intercept action, I do not find that the agency properly mailed the state tax intercept to the Petitioner at the [REDACTED] address. There is no evidence that this was ever an address at which the Petitioner lived. Thus I find that the appeal is timely as to the tax intercept. Wis. Stats., §990.001(4). However, it affords Petitioner little help here as the appeal of a tax intercept cannot address issues for which there was a prior right to a hearing. Wis. Stats., §49.85(4). There was a prior right to a hearing on the overpayment issue and the Petitioner is liable for the overpayment. I conclude the agency properly issued three dunning notices to the Petitioner. The debt remains unpaid. The agency may use the tax intercept where three payments on an overpayment are missed. FSH, §7.3.2.10. Three payments were missed. Thus I conclude that the agency may proceed with this tax intercept.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely as to the overpayment action.

The agency did not properly issue the tax intercept notice to the Petitioner's last known address so the appeal is timely. Based on the evidence, the agency properly seeks to recover the overpayment via tax intercept against the Petitioner.

THEREFORE, it is

ORDERED

That 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.

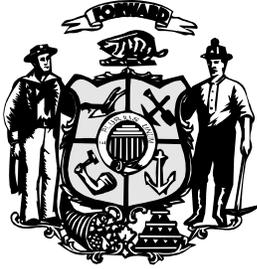
APPEAL TO COURT

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 Health Services, 1 West Wilson Street, Room 651, 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 Milwaukee,
Wisconsin, this 19th day of January, 2016

\sDebra Bursinger
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 19, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit