



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/171919

PRELIMINARY RECITALS

Pursuant to a petition filed February 03, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 15, 2016, at Manitowoc, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to initiate a tax intercept action against the Petitioner.

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: [Redacted]

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Manitowoc County.
2. From May – August, 2015, the Petitioner was an adult member of her mother's household and FS group.

3. On August 19, 2015, the agency issued a FoodShare Overpayment Notice and worksheets to the Petitioner at her mother's address. The notice informed the Petitioner that the agency was seeking to recover an overissuance of FS benefits in the amount of \$1,144 for the period of May 1, 2015 – August 31, 2015. The notice also informed the Petitioner of the right to appeal by filing a request for a hearing within 90 days.
4. On August 28, 2015, the Petitioner's mother contacted the agency and reported that the Petitioner had moved out. The agency removed the Petitioner from her mother's FS case. Petitioner's mother did not report a new address for the Petitioner.
5. On September 2, 2015, the agency issued a FoodShare Repayment Agreement to the Petitioner at her mother's address notifying her that the agreement must be signed and returned to the agency by September 25, 2015. It also informed the Petitioner that the failure to make payment arrangements could result in further collection actions including a tax intercept.
6. Petitioner's mother signed a Repayment Agreement and has made payments toward the debt.
7. On October 5, 2015, November 3, 2015 and December 2, 2015, the agency issued dunning notices to the Petitioner at her mother's address.
8. On January 15, 2016, the agency issued a notice of state tax intercept to the Petitioner at her mother's address informing her that her tax refunds or credits may be intercepted due to an unpaid public assistance debt of \$888.
9. In February, 2016, the Petitioner submitted an application for MA benefits and reported her new address.
10. On February 3, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case 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 C.F.R., sec. 273.15(g). An appeal of a tax intercept action must be filed within 30 days of the date of notice of the action. Wis. Stat., § 49.85.

In this case, the Petitioner asserts that she is not responsible for her mother's FS overissuance debt. It is undisputed that the Petitioner was an adult member of the Petitioner's mother's household and FS group from May, 2015 – August, 2015, the period of the overpayment. As an adult member of the household at the time of the overissuance, the Petitioner is jointly and severally liable with all other adult members of the household for the overissuance. 7 CFR § 273.18(a)(4)(i); FS Wisconsin Handbook, § 7.3.1.2. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household. *Id.*

The Petitioner's appeal was untimely as to the merits of the overissuance. The Overpayment Notice was properly mailed to the Petitioner at her mother's address on August 19, 2015. The Petitioner's mother did not report that the Petitioner had moved until August 28, 2015. Therefore, I conclude the agency properly issued the notice and the Petitioner failed to file a hearing within 90 days. Therefore, I have no jurisdiction over the merits of the overissuance.

The Petitioner's appeal was timely for the tax intercept action.

The agency may utilize tax refund interception as a means of recovering the overpayment. Wis. Stat. § 49.85. Section 49.85 provides that the Department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overissuance of Food Share benefits.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3). The Department has issued the required refund interception notice here.

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department of health services 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.

In this case, the Petitioner had a prior opportunity for a hearing on the merits of the overpayment. A timely appeal of that action was not filed. Based on the undisputed evidence that the Petitioner was an adult member of her mother's household at the time the overissuance of FS benefits occurred and the fact that she had a prior opportunity for a hearing on the merits of the overissuance, I conclude that the agency has the authority to initiate a tax intercept action against the Petitioner.

As dicta, I note that the Petitioner testified that she and her mother believed that her mother's agreement to repay the debt was sufficient to release the Petitioner from liability. Petitioner testified that her mother intends to repay the debt and has been making payments. Petitioner was advised to contact PACU to see if she could still sign a repayment agreement to prevent a tax intercept action but that the ALJ has no authority to order PACU to allow her to do so.

### **CONCLUSIONS OF LAW**

The agency has the authority to initiate a tax intercept action 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 29th day of March, 2016

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\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 March 29, 2016.

Sheboygan County Department of Human Services  
Public Assistance Collection Unit