FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FTI/172245

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 19, 2016, at Milwaukee, Wisconsin.

This hearing was rescheduled from March 22, 2016, because the Petitioner did not receive the hearing notice.

The issues for determination are whether Petitioner's appeal is timely and if so, whether Petitioner is liable for an overpayment incurred by her mother and whether the agency correctly implemented a tax intercept.

NOTE: The record was held open for one day to give the Petitioner an opportunity to verify her enrollment in a Texas College. The Petitioner provided a packet with her financial aid statements, her class schedule, enrollment data, transcripts and dorm fees. The packet has been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: [redacted], Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner's mother received FoodShare benefits for the periods of April 2013 through July 2013 and April 2014 through August 2015. (Exhibit 2, pgs. 6 and 7)

2. Petitioner was 18 years old or older during the time in question and included in her mother's case. (Exhibit 2, pg. 4)

3. Petitioner graduated from high school in the spring of 2013 and moved from her mother's residence in Milwaukee to her Godmother's home in Texas. During the summer of 2013, the Petitioner lived with her Godmother, [redacted], at an address on [redacted]. (Testimony of Petitioner; Testimony of [redacted])

4. On July 31, 2013, Milwaukee Enrollment Services (MILES) sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [redacted], indicating the Petitioner was overpaid FoodShare benefits in the amount of $1,346 for the period on April 1, 2013 through July 31, 2013. The notice was sent to an address on [redacted], in Wisconsin. (Exhibit 2, pgs. 23-26)

5. The [redacted] address was that of Petitioner's mother. (Testimony of Petitioner)

6. Petitioner attended college in Texas beginning in the fall semester of 2013 through the spring semester of 2014, during which time, she lived on campus. (Exhibit 3, pgs. 14, 19 and 20)

7. In May 2014, the Petitioner stopped attending college, due to the expense and moved back in with her Godmother. Petitioner lived with her Godmother, until May 2015, when she moved out on her own. (Testimony of Petitioner; Testimony of [redacted])

8. On October 2, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a dunning notice to remind her about the overpayment. The notice was sent to the [redacted] address. (Exhibit 2, pg. 44)

9. On April 2, 2015, PACU sent the Petitioner dunning notices to remind her about the $1,346 overpayment. The notice was sent to the [redacted] address (Exhibit 2, pgs. 13)

10. In May 2015, the Petitioner moved to an address on [redacted] in Houston, Texas. She later moved to her current address on [redacted]. (Testimony of Petitioner)

11. On August 4, 2015, the agency became aware of the Petitioner's address on [redacted] The agency noted the address of Petitioner's mother to be on [redacted], in Texas. (Exhibit 2, pg. 9)

12. On August 10, 2015, MILES sent the Petitioner a FoodShare Overpayment Notice, claim #[redacted], indicating she was overpaid benefits in the amount of $2,726.00 for the period of April 1, 2014 through November 30, 2014. This notice was sent to the [redacted] address in Wisconsin. (Exhibit 2, pgs. 27- 32)

13. Also on August 10, 2015, MILES sent the Petitioner another FoodShare Overpayment Notice, claim #[redacted], indicating that the Petitioner was overpaid benefits in the amount of $3,153 for the period of December 1, 2014 through August 31, 2015. This notice was sent to the [redacted] address in Wisconsin. (Exhibit 2, pgs. 33-39)

14. On September 2, 2015, PACU sent the Petitioner a dunning notice to remind her about the three overpayments. This notice was sent to an address on [redacted] in Texas. (Exhibit 2, pg. 14)

15. The [redacted] address belongs to Petitioner's cousin. Petitioner's mother moved there around March 2015. (Testimony of Petitioner)

16. Also on September 2, 2015, PACU sent the Petitioner a FoodShare Repayment Agreement. This was sent to the Petitioner at the address on [redacted]. (Exhibit 2, pgs. 40-43)

17. On November 13, 2015, PACU sent the Petitioner a tax intercept notice, advising her that her state tax return would be intercepted to satisfy the overpayment. The notice was sent to the Petitioner at the [redacted] address in Texas. (Exhibit 2, pg. 16)

18. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 24, 2016. (Exhibit 1)

DISCUSSION

The Tax Intercept

"At least 30 days before certification of an amount, the department of health services shall send notice to the last-known address of the person from whom that department intends to recover the amount…" Wis. Stats. §49.85(3)(a) "The notice shall do all of the following: …2. Inform the person that he or she may appeal the determination of the department of health services…by requesting a hearing under sub.(4) within 30-days of the date of the letter…." Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11

In this case, the date of the notice was November 13, 2015. Ordinarily a person would need to file her appeal by December 13, 2015. However, the notice was sent to an address on [redacted].

The Petitioner has testified credibly that she didn't live at the [redacted] address. The agency has presented no evidence to prove the Petitioner ever lived at the [redacted] address. On the contrary, the case comments for August 4, 2015, indicate that the last address that the agency had for Petitioner was her address on [redacted].[1] (See Exhibit 2, pg. 9)

PACU failed to give proper notice of the tax intercept to Petitioner, because it did not send the notice to Petitioner's last known address and there is no evidence Petitioner received the notice. Consequently, Petitioner's appeal of the tax intercept is timely. Wis. Stats. §49.85(3)(a)1.-6.; *FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

Per Wis. Stats. §49.85(2), "…the department of health services may not certify an amount under this subsection unless all of the following apply: 1. The department has met the notice requirement under sub. (3)…" Because PACU failed to properly notify the Petitioner of its intention certify the overpayment for recovery by the Department of Revenue, PACU's use of the tax intercept is incorrect. *Id.*

[1] It should be noted that case comment history search was for the period of January 1, 2015 through December 31, 2015, and no one made any entries after August 11, 2015.

Additionally, all the dunning notices were mailed to incorrect addresses. The first two that were sent on October 2, 2014, and April 2, 2015, were sent to the [redacted] address, well after the Petitioner moved to Texas in May/June 2013. The last dunning notice, which was issued on September 2, 2015, was sent to the [redacted] address, a place the Petitioner never resided and which was not consistent with the last address the agency had listed for Petitioner in its case comments, less than one month earlier.

In order for PACU to use a tax intercept, it must issue three dunning notices. Because PACU did not send the notices to the correct addresses, it did not correctly implement a tax intercept. *See FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

The July 2013 Overpayment Claim

At the hearing, the Petitioner indicated that she also wished to appeal the underlying overpayments.

Federal regulations at 7 CFR §273.18(e)(3)(i) state, "Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim…" The Federal regulations define household composition as follows:

> *General household definition*. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:
> 1. An individual living alone;
> 2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
> 3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
>
> *7 C.F.R. §273.1(a)*

The Federal Regulations are silent with regard to how notice is to be given to the household, when the household is comprised of a group of individuals who have parted ways and live separately by the time the overpayment is discovered and established.

The 5th and 14th amendments to the United States Constitution guarantee that no person shall be deprived of life, liberty or property without due process of law. U.S. Const. amend. V and XIV.

The Seventh Circuit Court of Appeals held that the demands of Procedural Due Process require that recipients of public assistance be given adequate notice of adverse action. Dilda v. Quern, 612 F. 2d 1055 (7th Cir. 1980). The Seventh Circuit Court of Appeals in Varga v. Trainor, 508 F.2d 485, 488-489 (7th Cir. 1974) stated that, "The fundamental requisite of due process of law is the opportunity to be heard." *Citing* Grannis v. Ordean, 234 U.S. 385, 394, (34 S.Ct. 779, 782, 58 L.Ed. 1363)(1914). The court in Varga v. Trainor went on to state that a public benefits recipient must have timely and adequate notice of the adverse action and an effective opportunity to defend against the action. Id at 489.

Thus, based upon the holdings of the Court of Appeals, procedural due process requires that notice be given to the individual recipients when the individuals in the household have parted ways by the time the overpayment is discovered and established. Otherwise, they will not be advised of the agency's action, the reason for it, nor will they be advised of their right to defend against the action.

Indeed, it would be contrary to the basic constitutional principles of due process to allow a state agency to take money from an individual, without giving that individual proper notice of why the state is taking his or her money and without giving the individual an opportunity to contest the taking.

I note that the FoodShare Wisconsin Handbook requires that, "A Notice of FS Overissuance (F-16028), a completed FS Overissuance Worksheet (F-16030) and a FS Repayment Agreement (F-16029) must be sent to the *client* for all types of claims." *Emphasis added; FSH §7.3.1.8* The term "client" is not defined in the manual, but is certainly a more narrow term than "household"[2] and can reasonably be interpreted to mean the individual against whom the claim is being made. Had the Department of Health Services wanted to require notice only to the general household/food unit, it would have used those terms in that section of the policy manual.

The record contains one overpayment notice for July 2013 that is addressed to Petitioner at the [redacted] address. Petitioner has testified credibly and provided corroborating evidence that she was no longer living in Wisconsin at the time the July 31, 2013 notice was mailed. Because the Petitioner did not get notice of the overpayment, her appeal of the July 2013 overpayment claim is timely.

Petitioner did not contest the agency's calculation of the July 2013 overpayment claim. Petitioner argued, however, that she should not be held liable for an overpayment incurred by her mother.

7 CFR §273.18 (a)(4) states, the following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
(ii) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

As discussed above, the Federal regulations define household composition as follows:

> *General household definition*. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:
> 4. An individual living alone;
> 5. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
> 6. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
>
> *7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

Petitioner stopped living with her mother when she graduated from High School possibly in late May, but more likely in early June 2013. As such, she was not a part of her mother's household as of that time. Had the change been timely reported in June, Petitioner would have been removed from her mother's case for the months of July 2013 going forward.

[2] The FoodShare Wisconsin Handbook uses the term "food unit" instead of the term "household" to refer to a group of individuals who live together, and purchase and prepare food together.

Because Petitioner was living with her mother in April, May and June 2013, and because Petitioner was 18 years old during that time, she is liable for the overpayment incurred by her mother in those months. Petitioner is not, however, liable for the overpayment for the month of July 2013, since she was not living with her mother in that month.

August 2015 Overpayment Claims

The August 2015 overpayment notices were also mailed to the wrong address. Both were mailed to the Petitioner at the [redacted] address in Wisconsin. According to the case comments mentioned above, the agency knew by August 4, 2015 that the Petitioner was living in Texas, yet it still issued the August 10, 2015 overpayment notices to an address on [redacted], in Wisconsin.

Because MILES sent the overpayment notices to the wrong address, Petitioner's appeal of the August 2015 Overpayment Claims are timely.

Petitioner has presented credible evidence that she was not living with her mother between April 2014 and August 2015. This is further supported by the August 2015 case comments which had different addresses listed for Petitioner and her mother. Because she was not living with her mother, Petitioner was not part of her mother's household. Accordingly, Petitioner is not liable for the overpayment that occurred between April 2014 and August 2015.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the underlying overpayment claims is timely.
2. The Petitioner is not liable for any overpayment incurred by her mother for the months of July 2013 going forward.
3. The Petitioner is liable for the overpayment claim for the months of April, May and June 2013.
4. The Petitioner's appeal of the tax intercept is timely.
5. The agency did not correctly implement a tax intercept.

THEREFORE, it is **ORDERED**

That the agency:

1) Rescind the November 13, 2015 tax intercept notice;
2) Remove the Petitioner as a liable party for the months of April, May and June 2013 under overpayment claim [redacted]; and
3) Remove the Petitioner as a liable party for overpayment claim numbers [redacted] and [redacted].

The agency shall take all administrative steps to complete these tasks within 10 days of this decision.

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 12th day of May,
2016

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\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on May 12, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit