



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FTI/140859

PRELIMINARY RECITALS

Pursuant to a petition filed May 09, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on July 05, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly issued a tax intercept to the Petitioner for an overpayment of FS benefits in the amount of \$1,800.

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: Anna Salaty

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 19, 2011 the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end on October 1, 2011 due to failure to complete his renewal.

3. On November 9, 2011, the agency issued a Notice of FS Overissuance to the Petitioner informing him that the agency is seeking to recover any overpayment of \$1800 for the period of January, 2011 – September, 2011 for failure to notify the agency of new employment and income over 130% of the federal poverty level. The Notice also informed the Petitioner of his right to a hearing by filing a request for hearing within 90 days of the effective date of the agency action.
4. On January 2, 2012, February 1, 2012 and March 1, 2012, the agency issued dunning notices to the Petitioner for the overissuance of FS benefits.
5. On April 13, 2012, the agency issued a tax intercept notice to the Petitioner. The notice states that the Petitioner had a right to a hearing within 30 days of the date of the notice. It also states:

“You have a right to an administrative hearing under sections 48.85(4) and 227.44 of the Wisconsin Statutes if you dispute this debt. You do not have a right to a hearing on any issue for which you had a prior right to a hearing. . .”
6. Petitioner filed an appeal with the Division of Hearings and Appeals on May 9, 2012.

DISCUSSION

Wis. Stat., §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 overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services 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 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 ... 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.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

I note that there are mandated time limits for filing an appeal. An FS appeal must be filed within 90 days of the negative action. See 7 C.F.R. §273.15(g); also Wis. Adm. Code §HA 3.05(3)(b). An appeal of a tax intercept notice must be filed within 30 days. Wis. Stat., §49.85(3).

At the hearing, the Petitioner disputed the overpayment. Though he had a right to a hearing pursuant to the tax intercept notice issued on April 13, 2012 and filed a hearing request within 30 days of that notice, the statutes do not allow a hearing on any issue for which there was a prior right to a hearing. In this case, the Petitioner had a prior right to a hearing on the merits of the overpayment if a hearing request was filed within 90 days of the notice of FS overissuance issued on November 9, 2011. The deadline for filing an appeal to dispute the merits of the overpayment was February 7, 2012.

The Petitioner testified credibly that he attempted to resolve the issue by contacting and leaving messages for the agency on numerous occasions in November, 2011. However, contacting the agency does not affect the deadline for filing an appeal. I note, as dicta, that it appears from the evidence presented that the overpayment was the result of agency error. However, the agency must recover any overpayment made within the previous 12 months from the date of discovery of the overpayment regardless of whether it was agency or client error.

Because the Petitioner's appeal as to the merits of the overpayment is untimely, the only issue is whether the agency was within its authority to issue a tax intercept based on the overpayment. Based on the evidence, the tax intercept was properly issued to the Petitioner.

CONCLUSIONS OF LAW

The agency properly issued a tax intercept in the amount of \$1,800 for a FS overpayment.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of September, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Waukesha County Health and Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on September 14, 2012.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability