



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/142353

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a tax intercept to the Petitioner for an overpayment of FoodShare (FS) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Katherine May

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 14, 2011, the Petitioner submitted an online application for FS benefits reporting her address as [REDACTED] Milwaukee, WI 53216. The Petitioner's mother submitted a

statement to the agency on November 14, 2011 that the Petitioner lives with her at [REDACTED] St., Milwaukee, WI 53216 and pays half of the rent.

3. On February 16, 2012, the agency issued a Notification of FS Overissuance and FS Overpayment Worksheets to the Petitioner at [REDACTED] Milwaukee, WI 53216. The overissuance was based on a finding by the agency that the Petitioner failed to include her mother in the application as a household member. If her mother had been included, the Petitioner would not have been eligible for FS due to excess household income. The notice informed the Petitioner of a right to appeal the overissuance by filing an appeal with the Division of Hearings and Appeals within 90 days of the date of the notice. The deadline for filing an appeal was May 16, 2012.
4. On March 2, 2012, April 3, 2012, May 2, 2012, and June 14, 2012, a repayment agreement and dunning notices were issued by the agency to the Petitioner at [REDACTED] Milwaukee, WI 53216.
5. On July 13, 2012, the agency issued a Notice of tax intercept to the Petitioner. The notice informs the Petitioner of the right to a hearing. It further informs the Petitioner that she does not have a right to a hearing on any issue for which she had a prior right to a hearing.
6. On July 13, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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). Time limits such as these are enforced if the person is notified of them.

In this case, the Petitioner testified at the hearing that she did not live with her mother at [REDACTED] Milwaukee, WI 53216. She testified that she only used her mother's address for mailing purposes. She has been living with her sister at [REDACTED] Milwaukee, WI. She testified that she did not always get mail that was delivered to her mother's address. She generally would eventually get it when she visited her mother's house. She was not sure if she received all of the notices from the agency

but she did receive the tax intercept notice and filed an appeal of that notice on the same day that it was delivered.

The Petitioner's testimony is simply not credible. When she applied for FS in November, 2011, she not only listed [REDACTED] Milwaukee as her address but she also submitted a statement from her mother that she and her mother lived together at that address. Now she states that she has been living with her sister for two years. The fact that she filed an appeal the same day that she received the tax intercept notice further erodes her credibility with regard to her testimony that she did not receive the prior notices. The Petitioner is not being truthful with the agency or with this ALJ.

Because I conclude the Petitioner received the agency's notices regarding the overissuance of FS benefits and failed to file a timely appeal, I will not address the merits of the overpayment because the Petitioner had a prior right to a hearing on that issue.

Based on the evidence submitted, the agency properly issued a tax intercept notice to the Petitioner for FS benefits that were overissued to her in the amount of \$713.

CONCLUSIONS OF LAW

The agency properly issued a tax intercept notice to the Petitioner for an overissuance of FS benefits in the amount of \$713.

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 served and 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, 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 29th day of November, 2012

\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 November 29, 2012.

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