



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FTI/143618

PRELIMINARY RECITALS

Pursuant to a petition filed September 4, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Wisconsin Department of Health Services' Enrollment Services Center in regard to FoodShare benefits (FS), a hearing was held on September 27, 2012, by telephone.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect an FS overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Jessica Thony, E.S. Quality Assurance Spec.
Enrollment Services Center
PO Box 7190
Madison, WI 53707-7190

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. The petitioner, age 34, was a member of [REDACTED]'s two -person FS household from at least July 2010 through at least November 2010. [REDACTED] is the petitioner's mother.

3. [REDACTED] applied for FS in July 2010, and the household was found to be eligible. The petitioner receives income from Social Security Disability, federal SSI and State Supplemental SSI. His income was correctly budgeted at all times relevant hereto.
4. On the July 2010 application, Ms. [REDACTED] reported that she was receiving no income. She began receiving Unemployment Compensation (UC) by the end of July 2010. This should have been reported in August, which in turn would have affected her September 2010 allotment. The Department therefore incorrectly issued a \$367 allotment to the household for September.
5. Ms. [REDACTED] reported receipt of UC to the Department on September 8, 2010. Acting on this report, the Department reduced the FS allotment for October to \$16. On September 20, 2010, Ms. [REDACTED] reported to the Department that her UC had ended. Therefore, the Department increased the household's FS allotment to \$367 for November 2010. However, her September 20 report was incorrect, as she was issued UC checks on September 20, September 27, October 4, October 12, October 18, and October 25, 2010. On November 10, 2010, Ms. [REDACTED] reported that her UC had resumed.
6. On February 28, 2011, the Department issued a *Notification of FS Overissuance* and worksheets to both Ms. [REDACTED] and the petitioner. The overpayment claims were \$351 (\$367 – \$16) for September 2010 (# [REDACTED]), and \$351 for November 2010 ([REDACTED]). The Notification advised them to file any appeal to challenge the correctness of the overpayment determination within 90 days. No overpayment appeal was filed. Repayment agreements were sent to both persons on March 2, 2011.
7. From February 2001 through March 2012, the petitioner was listed as a member of the petitioner's FS household, because they reside together, and "purchase and prepare" food together. During this period, the Department recovered a portion of the overpayment by recouping 10 percent of the household's monthly allotment.
8. In March 2012, Ms. [REDACTED] submitted her periodic review report. A draft report document with printed answers to household questions was issued to her. The household is then able to send the draft back with corrections, if needed. Ms. [REDACTED] sent back her report to the Department, with the handwritten notation that she was not buying and eating food with the petitioner ("error – no, do not"). See Exhibit 1, p.45.
9. As a result of Ms. [REDACTED] written change to her review form, the Department removed the petitioner from her FS household. Because the petitioner was not automatically repaying the overpayment through either the allotment recoupment process or through a repayment agreement, the Department sent him a Repayment Agreement and dunning letter on May 2, 2012 (for missing an April payment). Another dunning letter was sent to him on June 4, 2012 (for missing the May payment), and on July 3, 2012 (for missing the June payment), along with a Repayment Agreement. Because the petitioner missed making any FS repayment for three months, the Department referred his name for tax refund interception.
10. On August 17, 2012, the State issued a state income tax refund interception notice to the petitioner. It declared that he retains co-responsibility for an FS overpayment, with a then-current balance of \$419 (\$68 + \$351). See, Exhibit 2, Notice.
11. The eligibility notice issued to the petitioner and Ms. [REDACTED] on April 9, 2012, stated that the petitioner was no longer included in her FS household. As of the September 17, 2012 notice issued on Ms. [REDACTED] case (for August and September 2012 benefits), the petitioner was still not included in her FS household.

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 overissuance of Food Share benefits.

The Department of Workforce Development 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.*

(emphasis added)

The petitioner has had a prior opportunity for hearing on the merits of the overpayment. He did not file a hearing request to challenge that overpayment within the 90 day period, and does not contest that the overpayment occurred.

The petitioner contends that referral for tax refund interception was inappropriate because (1) he was not the head of the FS household, and (2) he contends that he always purchased/prepared/ate food with his mother after March 2012, so he should never have been given separate household status for recovery purposes.

An adult who was a FS household member at the time that the overpayment occurred is jointly liable for paying back the overpayment, per federal rule. 7 C.F.R § 273.18(a)(4).

The Department correctly gave the petitioner separate household status after his mother reported to the Department that he was not purchasing, preparing or eating food with her. His mother testified that a mistake was somehow made, and that he always ate with her. However, her testimony was not credible because she changed the pre- printed answer (“yes” on sharing food) on the review generated on March 12, 2012, made a handwritten correction to “no”, and sent the correction in to the Department.

Because the petitioner was not in his mother’s FS household from at least April through August 2012, the Department correctly sought recovery from him. The federal FS code section on overpayment recovery allows a state to refer delinquent claims for collection (including interception) after the overpayment notice and repayment agreement have been issued:

(3) *Notification of claim.* (i)...

(iv) Subsequent demand letters or notices may be sent at the discretion of the State agency. The language to be used and content of these letters is left up to the State agency.

...

(5) *Determining Delinquency.* (i) ... a claim must be considered delinquent if:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(B) A payment arrangement has been established and a schedule payment has not been made by the date.

7 C.F.R. § 273.18(e)(3),(5). See also, *FoodShare Wisconsin Handbook*, §7.3.1.8. Neither a Repayment Agreement nor payment on the overpayment were received from the petitioner by the July 25, 2012 due date identified in the last Repayment Agreement and dunning letter. Thus, the interception referral was correct.

CONCLUSIONS OF LAW

1. The Department correctly certified the sum of \$419 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition 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 Madison,
Wisconsin, this 29th day of September, 2012

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c: Enrollment Services Center - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 1, 2012.

Enrollment Services Center
Public Assistance Collection Unit
Division of Health Care Access and Accountability