FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FTI/143853

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Enrollment Services Center in regard to FoodShare benefits (FS), a Hearing was held via telephone on October 23, 2012. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters: FTI/143851; and, FTI/143856.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following FS overpayment Claim: Claim # [redacted] September 27, 2010 to August 31, 2011; $3,496.00 ($242.00 has already been repaid; balance still owing of $3,254.00); non-client error.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Jessicia Thony, Economic Support Quality Assurance Specialist
Enrollment Services Center
PO Box 7190
Madison, WI 53707-7190

OTHER PERSON PRESENT:
[redacted], petitioner's ex-wife

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. The Wisconsin Department of Health Services ["DHS"] seek s to intercept petitioner's Wisconsin state income tax refund and apply it against the following FS overpayment Claim: Claim # [redacted]; September 27, 2010 to August 31, 2011; $3,496.00 ($242.00 has already been repaid; balance still owing of $3,254.00); non-client error.
3. Petitioner received a written FS overpayment notice entitled *Notification of FS Overissuance* dated September 6, 2011 for the overpayment Claim listed in *Finding of Fact* #2, above; the FS overpayment notice explained the overpayment and how petitioner could file an appeal, including the 90-day time limit for filing an appeal.
4. Petitioner never requested a Hearing in response to the September 6, 2011 *Notification of FS Overissuance*.

DISCUSSION

The state shall, at least annually, certify to the Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Aid to Families with Dependent Children ["AFDC"], an overpayment of Medical Assistance ["MA"], and an overpayment of Wisconsin Works ["W-2"]. Wis. Stat. § 49.85(2) (2009-10).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2009-10).

The Hearing right is described as follows:

> "If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."
>
> Wis. Stat. § 49.85(4) (2009-10).

A *Notification of FS Overissuance* dated September 6, 2011 was sent to petitioner and he received it. The notice explained how petitioner could file an appeal. Thus, petitioner had a prior opportunity to contest the overpayment listed in *Finding of Fact* #2, above. It follows that petitioner may not now contest the merits of the FS overpayment.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the FS overpayment claim identified in *Finding of Fact* #2, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of $3,254.00 and that amount may be applied against the FS overpayment claim identified in *Finding of Fact* #2, above.

NOW, THEREFORE, it is

ORDERED

That DHS may certify the amount of $3,254.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2009-10), for purpose of a tax intercept of petitioner to repay the FS overpayment claim identified in *Finding of Fact* #2, above.

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 Madison,
Wisconsin, this 26th day of November, 2012

_____

\sSean P. Maloney
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 26, 2012.

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