



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/144878

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 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 collection of a FoodShare (FS) benefits overpayment, a hearing was held on December 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect an overpayment of FoodShare 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: Alma Lezama

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner resided with ██████████ ██████████ in mid-2010, and the two began receiving FS benefits jointly on or about May 26, 2010. Exhibit 2.
3. Pursuant to a Six Month Report form completed in May, 2011, Ms. ██████████ indicated that petitioner was no longer residing with her. Exhibit 2. Petitioner continued to use Ms. ██████████'s address to receive mail.
4. Due to agency error, Ms. ██████████ continued to receive benefits for petitioner, and respondent established an overpayment in the amount of \$4,037.00. Respondent sent notice of the overpayment to petitioner on December 30, 2011. Neither petitioner nor Ms. ██████████ appealed the overpayment determination.
5. Respondent has recouped \$148.00 of the FS overpayment, leaving a balance as of the date of hearing of \$3,889.00.
6. A repayment agreement was mailed to petitioner January 3, 2012, and dunning notices were sent to petitioner on February 2, 2012, March 2, 2012, and April 3, 2012.
7. A tax intercept notice was mailed to petitioner on May 11, 2012. Exhibit 3. That notice specified that petitioner had 30 days from the date of the notice to file an appeal of the tax intercept.
8. Petitioner filed his appeal on October 30, 2012, 172 days following the date of the tax intercept notice.

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 Department is required to recover all overpayments of public assistance benefits. *See*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19...); 7 C.F.R. § 273.18(a) (“...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive...”), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 49.85.

The petitioner has had a prior opportunity for a hearing on the merits of the overpayment. He did not file a hearing request to challenge that overpayment within the 90 day period. The petitioner does not get another opportunity to argue the validity of the overpayment decision here.

In like fashion, the petitioner’s hearing request on the tax interception action was untimely filed. He should have filed his appeal within 30 days of the May, 2012, interception notice. Instead, the appeal was not filed until 172 days after the May, 2012, notice. Petitioner argued that he was going through a

rehabilitation program in approximately August, September, and October of 2012. As such, he was not available to deal with his mail on a day to day basis. The argument fails due to the time frame at issue here. Specifically, the deadline to appeal the tax intercept would have been 30 days following May 11, 2012. By petitioner's own testimony he didn't commence his rehabilitation until August 1, 2012, which is more than a month after that appeal deadline.

Petitioner also argued that he was confused by the overpayment allegations, which may be understandable since they pertain to an agency error. While I can understand the petitioner's argument, it does not create a viable legal defense to the charge that the instant appeal was not filed in a timely manner. Based on the record before me, I conclude that petitioner has failed to timely file the instant appeal which thereby deprives me of jurisdiction over this matter.

CONCLUSIONS OF LAW

The petitioner's appeal from the tax interception notice was not timely filed.

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

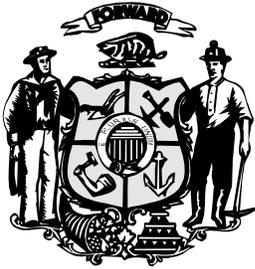
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 13th day of February, 2013

\sPeter McCombs
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 February 13, 2013.

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