



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/144987

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Oneida County Department of Social Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on November 29, 2012.

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] May 24, 2011 to February 2, 2012; in the total amount of \$2,113.00.

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: Amy Mayo, Support Program Supervisor
Stephanie Schreiber, ESS
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The County has established the following alleged FS overpayment against petitioner: Claim # [REDACTED]; May 24, 2011 to February 2, 2012; in the total amount of \$2,113.00. Exhibits #2 #3.
3. Petitioner was sent, via U.S. Mail, a *Notification of FS Overissuance* dated May 24, 2012 concerning the overpayment listed in *Finding of Fact #2*, above; petitioner never received that notice because her mail was being returned to the County by the U.S. Post Office. Exhibit #2.
4. The overpayment listed in *Finding of Fact #2*, above resulted from the fact that petitioner was living with her parents during the time period in question and failed to report this. Exhibit #3.

DISCUSSION

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

Petitioner never received notice of the alleged overpayment listed in *Finding of Fact #2*, above. This conclusion is supported by petitioner's testimony and by County computer case notes showing that mail sent to petitioner in May 2012 was being returned to the County by the U.S. Post Office. Thus, petitioner never had a prior Hearing, or a prior opportunity for a Hearing, concerning the alleged FS overpayment at issue here. Therefore, the above quoted statutory language does not limit the scope of the issues to be considered here.

The burden is on the County to show by a preponderance of the credible evidence that petitioner is liable for the FS overpayment alleged in *Finding of Fact #2*, above. See, Wis. Admin. Code § HA 3.09(4) (September 2001). Based on the evidence that is part of the record of this matter it must be concluded, by a preponderance of the credible evidence, that petitioner lived with her parents during the time period of the overpayment (petitioner admits that she lived with her parents during at least part of this time period). Therefore, it follows that petitioner is liable for the alleged FS overpayment listed in *Finding of Fact #2*, above.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$2,113.00 and that amount may be applied against the FS overpayment claim identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That the Wisconsin Department of Health Services ["DHS"] may certify the amount of \$2,113.00 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 28th day of January, 2013

\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 January 28, 2013.

Oneida County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability