



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FTI/145203

PRELIMINARY RECITALS

Pursuant to a petition filed November 08, 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 January 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the tax intercept appeal is timely.

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: Mary Hartung

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a tax intercept notice on October 15, 1999 relating to a \$17,494 debt.
3. Petitioner filed an appeal on November 13, 2012.

DISCUSSION

The Department 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 notice is to be sent to the last known address. *Id.*

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

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.

An appeal of the tax intercept notice must be filed within 30 days of the tax intercept notice. *§49.85(3)(a)2., Stats.* If it is not filed within that time limit the Division of Hearings and Appeals loses jurisdiction, i.e., legal authority to make a decision on the merits of a matter.

Petitioner was sent a tax intercept notice on October 15, 1999. Petitioner does not believe she got it because she was having relationship issues and did not have a regular address. It was, however, sent to the correct address on file with the Department. If not received, it was not the result of agency error. I have to conclude, therefore, that Petitioner's appeal is untimely as to the tax intercept and, in this case, this also has the effect of precluding a challenge to the underlying overissuance.

The Department may utilize tax intercept as a means of recovering the overpayment. *See, Wis. Stat. § 46.85.*

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

The appeal 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 12th day of February, 2013

\sJohn P. Tedesco
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 12, 2013.

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