



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FTI/145740

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 05, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 05, 2013.

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] December 1, 2010 to November 30, 2011; original amount \$2,719.00; outstanding balance \$2,483.00.

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: Alma Lezama, HSPC Senior  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following FS overpayment Claim: Claim # [REDACTED]; December 1, 2010 to November 30, 2011; original amount \$2,719.00; outstanding balance \$2,483.00.
3. Petitioner received a written FS overpayment notice entitled *Notification of FS Overissuance* dated June 27, 2012 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 June 27, 2012 *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 June 27, 2012 was sent to petitioner and was received by petitioner. 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 testified that in response to the June 27<sup>th</sup> notice she made a telephone call and was told not to worry, to ignore the letters, and that her step-mother would take care of it. This is unfortunate -- but does not change the fact that petitioner had a prior opportunity to contest the 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 \$2,483.00 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 \$2,483.00 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 12th day of February, 2013

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2013.

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