



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/145893

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 28, 2013, at Waukesha, Wisconsin.

The issues for are whether Petitioner's appeal is timely and whether the agency corre ctly initiated a tax intercept to recoup overpaid 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: Sue Rhode, Fraud Investigator and Benefit Specialist
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was included in the FoodShare group of her child's father. (Testimony of Ms. Rhode and Petitioner)

3. On June 5, 2012, Waukesha County Health and Human Services (the agency) sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED] indicating that she had been over-issued FoodShare benefits in the amount of \$4734.00 for the period of 09/01/11 to 05/31/12. (Exhibit 10)
4. On July 3, 2012, the agency sent Petitioner a repayment agreement. (Exhibit 8)
5. On August 2, 2012, September 5, 2012 and again on October 2, 2012, the agency sent Petitioner Dunning Notices, reminding her about the FoodShare Overissuance. (Exhibits 5-7)
6. Petitioner received all of the aforementioned notices. (Testimony of Petitioner; Testimony of Petitioner's mother)
7. Petitioner did not file an appeal of the overpayment because she was told that her child's father, as the primary beneficiary in the FoodShare group, needed to resolve the matter. Petitioner expected the father of her child to follow through with this. (Testimony of Petitioner)
8. On November 16, 2012, the Public Assistance Collections Unit (PACU) sent Petitioner a notice indicating that any tax refunds to which she might become entitled, can be intercepted to satisfy the FoodShare Overissuance. (Exhibit 2)
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 12, 2012. (Exhibit 1)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(2)*.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an over-issuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

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 overpayment of general relief benefits, over-issuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for set-off 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

Petitioner indicated that she wanted to appeal the agency's determination that she is liable for the \$4734.00 overpayment, because her child's father perpetrated a fraud without her consent and because she received no benefit from his fraud. However, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare over-issuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination.

Even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the over-issuance, a hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, or as in this case, a finding of FoodShare over-issuance.

The date of action, concerning the agency's determination that Petitioner was liable for an overpayment of FoodShare benefits, is June 5, 2012, the date Petitioner was notified of the overpayment. Petitioner's appeal was filed 190 days after the June 5, 2012 date of the action. Thus, it was untimely, and no jurisdiction exists for considering Petitioner's appeal of the overpayment itself.

With regard to the tax intercept, the agency correctly implemented the tax intercept, having properly notified Petitioner of the over-issuance and having issued three dunning notices regarding the overpayment.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely, with regard to whether the agency correctly determined that she is liable for an over-issuance of FoodShare benefits. Consequently, there is no jurisdiction to consider the merits of Petitioner's appeal of that matter.

The agency correctly initiated a tax intercept to recoup the overpaid FoodShare benefits.

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 Milwaukee,
Wisconsin, this 28th day of February, 2013.

\sMayumi M. Ishii
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 28, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability