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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FTI/146001

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 14, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 26, 2013, at Chilton, Wisconsin.

The issue for determination is whether the Department correctly certified an overpayment of FoodShare benefits for state income tax refund intercept.

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: Mitch Berge, Income Maintenance Worker  
Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County. She formerly resided in Sheboygan County and received FoodShare benefits during the period of January – May, 2012, totaling \$2,430.
2. Between January 1 – August 30, 2012, the petitioner resided at [REDACTED]. On or about September 1, 2012, she moved to [REDACTED].

3. On May 13, 2012, the Sheboygan County income maintenance agency received an State Wage Income crossmatch report (SWICA) informing the agency that the petitioner had been employed beginning on November 28, 2011, and the agency had not budgeted any earned income for FS purposes for the petitioner's FS household between the job start date and the discovery date.
4. Subsequently, the agency took verification action to establish with documentation from the petitioner's employer her earned income between the first required month after report, January, 2012, through May 31, 2012.
5. On July 9, 2012, the county agency issued a Notification of FS Overissuance and Worksheets to the petitioner informing her that the agency had determined she had been overpaid \$2,430 of FS in the period of January – May, 2012, due to a client error in reported income. This Notice was mailed to the petitioner's [REDACTED] address; she asserts she did not receive it; and the agency records regularly would include a notation of returned mail and the petitioner's electronic case file does not have any such returned mail notation.
6. On September 5, 2012, October 2, 2012, and November 2, 2012, the county agency issued dunning letters to the petitioner to her new [REDACTED] address, demanding that she pay a past due public assistance debt of \$2,430 for the period of January – May, 2012. The petitioner denied receiving these dunning letters too.
7. On December 14, 2012, the Wisconsin Department of Children and Families issued a letter notice to the petitioner informing her that the Department of Revenue would be intercepting any state income tax refund or homestead credit to which the petitioner was entitled, if any, and apply any monies seized to defray her past due FoodShare public assistance debt of \$2,340 arising in the period of January – May, 2012. The notice told the petitioner that she could appeal within 30 days of the date of the letter if she disagreed.
8. The petitioner filed an appeal contesting the FoodShare tax intercept certification with the Division of Hearings & Appeals on December 14, 2012.
9. The petitioner received the Notification of FS Overissuance & Worksheets but took no action to appeal that negative action until she received the tax intercept certification notice of December 14, 2012, telling her that her state income tax refund may be seized by intercept.

### 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 the overpayment of Food Stamps and/or Medical Assistance, among other benefit programs.

The Department of Children and Families, as collection agent for the Department of Health Services, 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) (a), 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)

As noted in Findings of Fact #5 - #9 above, the critical question is whether the petitioner had the prior opportunity for a hearing on the merits of her FS overpayment, but she failed to act to file a timely appeal.

This is a close case. The petitioner avers that she did not receive the July Notification or any of the subsequent dunning letters. She asserts that she was unaware of the overpayment until she received the December tax intercept Notice. When questioned, she alleges that she has had mail delivery problems and even contacted the post office. She did not, however, clarify where this problem existed, i.e., [REDACTED], or both.

However, she also admits that she *did* reside at the address to which the July, 2012, Notification and Worksheets was sent *at the time* that these documents were mailed to her. The dunning letters reflect that the [REDACTED] address was used in early September, 2012, but that the two later dunning letters correctly used the [REDACTED] address in October and November, reflecting that the September, 2012, address change was both reported, by her, and recorded, by the agency. Subsequently, in mid-December, 2012, the tax intercept Notice was also mailed to the [REDACTED] address, and the petitioner received it.

On rebuttal, Mr. Berge testified that the county agency routinely records the return of all mail sent to clients like this overpayment notice and that a review of the CARES database for this petitioner does not reveal that any mail returned subsequent to July 9, 2012.

I find the petitioner's testimony about the lack of receipt of the FS Overissuance Notification and Worksheet of July 9, 2012, to be highly self-serving, evasive, convenient, uncorroborated by any other witness or tangible documentation, contradicted by the delivery of the tax intercept notice to a correct address even though she asserts two dunning letters to that address were not received in the two months prior, and on the whole, lacking the "ring" of truth. Furthermore, there is no evidence that any of those notices were returned as undeliverable. Moreover, petitioner did not establish with any reliable corroborating evidence that she has any problems with her mail delivery. Here mere assertion that this was so is not sufficient. I find her not credible on this point. I conclude that she did receive the notice and worksheets. Accordingly, she had her prior opportunity to be heard on the FS overpayment and did not act to appeal until notified of a likely state income tax refund interception.

As a side-note to the petitioner, had I reached the merits of the overpayment matter, it would have been sustained. The overpayment occurred within a year of discovery, so it did not matter a whit whether it was caused by her fault (in not reporting) or by the agency (in not acting on a report of income). In *either* event it must be recovered by law. At no time has this petitioner established that any of the computations made by the agency were incorrect, or provided any tangible evidence indicating such error, like proof of her income in the affected months.

The Department is required to recover all overpayments of public assistance benefits due to client and non-client error, and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, 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.

Accordingly, the FS overpayment is established as a matter of legal record, and the Department is authorized under law to seek to recover it by state income tax refund intercept.

**CONCLUSIONS OF LAW**

- 1) That the petitioner has had a prior opportunity to be heard on the FS overpayment determination of July 9, 2012, and jurisdiction is not present in this tax intercept appeal to reach that issue.
- 2) That the Department has correctly certified a public assistance remaining debt of \$2,430 in overpaid FS benefits (FS Claim No. [REDACTED]) to the Wisconsin Department of Revenue for state income tax refund intercept from the petitioner.

**THEREFORE, it is****ORDERED**

The petition for review herein be and the same is hereby 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 5th day of March, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 March 5, 2013.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability