



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/146081

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 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 on March 06, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to a notice of tax intercept tax issued to collect an overissuance of 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: Katherine May

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
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 dated November 16, 2012 that informed Petitioner that her tax refunds were subject to intercept to repay a \$3622.00 overpayment of FoodShare benefits

(Claim # [REDACTED]). That was sent to Petitioner at the above address. It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.

3. This appeal was filed on Wednesday, December 19, 2012; the 33rd day after the date of the notice of tax intercept.
4. Petitioner had a hearing before the Division of Hearings and Appeals on March 7, 2012 pursuant to an appeal filed by Petitioner with the Division of Hearings and Appeals on January 18, 2012 to challenge a September 28, 2011 Notice of FoodShare Overissuance for this claim # [REDACTED]. A decision was issued on March 29, 2012 that concluded that Petitioner's appeal was untimely and dismissed the appeal. *See Division of Hearings and Appeals case # FOP/138219.*

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)*. All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4);

Once an overpayment is established, *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, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

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 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. (emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

This appeal was filed more than 30 days after the tax intercept notice, thus is untimely. Additionally, as discussed above, Petitioner had a prior hearing on the merits of the overpayment. As a practical matter then the determination by the agency that the Petitioner was overpaid is affirmed. The Department is

required to recover all overpayments of public assistance benefits . *See 45 C.F.R. § 233.20(a)(13)(I)*. The Department may utilize tax intercept as a means of recovering the overpayment. *See, Wis. Stat. § 46.85* .

This hearing was conducted with hearings held for this same claim for Petitioner's mother and brother who also been determined to be liable for the overpayment. One of the brothers had his tax return intercepted. The family questioned how this happened as the tax intercept notice indicates that the State of Wisconsin Department of Revenue will not intercept a tax refund until a hearing is held and a decision issued. After the hearing, I did contact the State Public Assistance Collection Unit to ask what happened in this case. It turns out that the State did, on January 3, 2013, stay its tax intercept action. The Federal government is not, however, governed by state law and the tax intercept here was apparently made by the Federal government.

CONCLUSIONS OF LAW

That Petitioner's appeal is untimely and the Division of Hearings and Appeals does not have authority to address the merits of this matter.

NOW, THEREFORE, it is **ORDERED**

That 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 Milwaukee,
Wisconsin, this 6th day of March, 2013

\sDavid D. Fleming
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 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability