



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/146746

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Fond du Lac County Department of Social Services in regard to interception of his income tax refund to collect overpaid FoodShare benefits (FS), a hearing was held on April 9, 2013, at Fond du Lac, Wisconsin. A hearing set for March 7, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Deb Bohlman, ES Spec.
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.

2. The petitioner was overpaid FS of \$1,104 from August 1, 2009, through November 30, 2009), due to client error. Specifically, he filed a fair hearing request with aid continuation for August through November, 2009, and then lost the hearing. On **April 27, 2010**, the county agency sent a *Notification of FS Overissuance* and worksheets (claim #3900 316783) to the petitioner at his correct and last known address, advising him of this fact. Although hearing rights information was contained in that Notification, the petitioner did not timely appeal (90 days) from that Notification.
3. When no payments were received in May, June or July 2010, the Department sent dunning letters to the petitioner on June 2, July 2, August 3, and September 2, 2010.
4. The petitioner did not file a hearing request to challenge this overpayment determination until January 22, 2013.
5. On June 15, 2012, a state tax refund interception notice was issued to the petitioner. That notice advised that \$882 remained to be recovered on the above FS claim, and any appeal should be filed within 30 days. That notice was sent to the last known address for the petitioner that the Department had on file at the time, [REDACTED].
6. The petitioner resided at the [REDACTED] address in April 2010 and June 2012, and moved to a different address in September 2012.
7. After the June 15, 2012 interception notice, the Department has received additional payments. The balance due at the time of this hearing was \$851.

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 overissuance of Food Share benefits.

The Department of Workforce Development 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), 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)

The petitioner has had a prior opportunity for hearing on the merits of the overpayment. He did not file a hearing request to challenge that overpayment within the 90 day period. The petitioner does not get another opportunity to argue the validity of the overpayment decision here. The petitioner was also untimely in filing the tax interception appeal, as the 30 day appeal deadline from June 15, 2012 was missed.

The determination by the county agency that the Petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits. *See*, Wis. Stat. § 49.195(3); 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. Wis. Stat. § 49.85. The petitioner did not establish

that the Department has erred in its arithmetic in arriving at the current amount to be intercepted (which is the primary function of an interception hearing).

CONCLUSIONS OF LAW

1. The Department correctly certified the sum of \$882 as an amount due and proceeded with the action to intercept the petitioner's income tax refund. The balance remaining for recovery at this time on the FS claim is \$851.

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 Madison,
Wisconsin, this 2nd day of May, 2013

\sNancy J. Gagnon
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 May 2, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability