



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/147641

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Wisconsin Department of Health Services, by the Milwaukee Enrollment Services unit, to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare benefits (FS), a hearing was held on March 27, 2013, at Milwaukee, Wisconsin.

The issue for determination is moot as matter of fact and law, because the Department has agreed to rescind the tax intercept actions against the petitioner and his adult daughter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Belinda Bridges, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He was the casehead of a FoodShare group of 3 persons, including his then adult daughter [REDACTED], during the period of March – June, 2011.

2. On November 30, 2011, the county agency issued a Notice and Worksheets to the petitioner informing him that his household had been overpaid \$1,982 in FS in the period of March – June, 2011, due to client error in reporting household income that led to a budgeting error; and that he, and [REDACTED] [REDACTED], were liable on this debt. See, Exhibit #2
3. On or about February 28, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals in DHA Case No. FOP/139140 contesting the overpayment determination of November 30, 2012.
4. On April 12, 2012, the Division of Hearings & Appeals dismissed the petitioner's appeal in DHA Case No. FOP/139140 as voluntarily withdrawn by the petitioner.
5. On or about April 14, 2012, the petitioner and his adult daughter, [REDACTED] [REDACTED], each submitted signed repayment agreements agreeing to pay \$40 each, per month, to repay the FS overpayment debt.
6. On November 16, 2012, the Wisconsin Department of Children and Families issued a state tax refund intercept notification to the petitioner informing him that he owed a past due debt arising from public assistance overpaid for FS in the period of March – June, 2011, and that his state income tax refund and/or homestead credit would be intercepted to apply any such payments to defray his debt.
7. On February 26, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals in DHA Case No. FTI-147641 contesting the state tax refund intercept action of November 16, 2012.
8. At the time of the hearing held on March 27, 2013, the petitioner's household owed a balance due on the original FS overpayment debt of a total of \$828. The petitioner's daughter, [REDACTED] [REDACTED], is making regular monthly payments by recoupment from FS, and the petitioner is generally paying about \$80 per month in cash, ½ in his name and ½ in [REDACTED]'s name. He missed making the payments during three months in the past year, generally trying to make up for such misses with late payments in a succeeding month.
9. After the hearing, the administrative law judge contacted Jennifer Bach of the DCF-PACU on April 1, 2013, to confirm the existence of repayment agreements because no documents had been provided during the hearing showing that had occurred; at that time Bach informed the administrative law judge that PACU would remove the tax intercept certification against the petitioner and [REDACTED] [REDACTED], while also noting that any future failure to make payments due in each and every calendar month may again result in a future new state income tax refund intercept certification.
10. No issue remains for determination by the administrative law judge; the petitioner conceded that the overpayment was correctly imposed and due, and did not contest the balance remaining due. Rather, he wanted the tax intercept action removed against him, and his adult daughter; and the Department has agreed to do so.
11. The balance remaining due on the debt was \$828 as of the hearing on March 27, 2013.

DISCUSSION

Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, Food Stamps, AFDC and/or Medical Assistance payments previously made incorrectly.

The Department of Children and Families – Public Assistance Collections Unit must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from 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.

The petitioner has had a prior opportunity for hearing on the merits of the overpayment, as he had filed an appeal in 2012 contesting the FS overpayment determination, and that appeal was dismissed on April 12, 2012, as voluntarily withdrawn by him. That means that that prior hearing decision affirmed the agency's decision that the petitioner's household had been overpaid FS as a matter of law. The petitioner does not get another opportunity to argue the validity of that decision here.

Nor did he in anyway assert that the determination on the merits was invalid. Rather, he asserted that he had been making payments on the debt and should not have been subjected to a tax intercept certification; and further, that he was making double payments so his adult daughter would not be subjected to a state income tax refund certification and intercept either.

The debt is a matter of legal record, and against both individuals. Both signed a repayment agreement. In light of their evident good faith in making repayments, even though payments were late for three months in the past year, the Department, by representative Jennifer Bach, has agreed to rescind the state income tax refund certifications of record against [REDACTED] [REDACTED] and [REDACTED] [REDACTED] on FS debt 9900341579.

Both are advised here that they must each make the respective promised \$40 payments each and every calendar month or the Department retains and reserves the right to again seek a state income tax refund intercept certification under law. Mr. [REDACTED] would be well-advised to submit these payments for them well before the end of any given calendar month to avoid that consequence.

CONCLUSIONS OF LAW

- 1) The petitioner's household, including his then adult daughter, was overpaid FS in the amount of \$1,982 in the period of March – June, 2011; and as of March 27, 2013, \$828 remained due and owing which both have agreed in writing to repay at the rate of \$40 per month, per person until paid off.
- 2) The Department has stipulated and agreed to rescind any state tax refund intercept currently of record against [REDACTED] [REDACTED] and/or [REDACTED] [REDACTED], related to FS overissuance Claim No. 9900341579.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency and the Department of Children and Families (PACU) with instructions to rescind the state income tax refund interception of record related to FS overissuance Claim No. 9900341579, as entered against [REDACTED] [REDACTED] and/or [REDACTED] [REDACTED], and to cease all current tax intercept activities premised on that claim, for so long as the two make repayments when due. These actions shall be completed within 10 days of the date of this Decision.

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 April, 2013

\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 April 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability