



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/147828

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2013, 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 May 02, 2013, at Milwaukee, Wisconsin. The record was held open for 10 days post-hearing for Petitioner to submit additional documentation. On May 13, 2013, the Petitioner called the administrative law judge to advise that she would not be submitting any additional evidence. The record closed on May 13, 2013.

The issue for determination is whether the agency properly issued a tax intercept for unpaid excess public assistance in the amount of \$5,161 to the Petitioner.

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: Lee Vang

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner and his wife, MB, resided together since July, 2007 and were married in January, 2008.
3. On December 12, 2008, the agency issued Notifications of FS Overissuance to MB informing her that the agency intended to recover \$6,501 in FS benefits overissued to her from October 1, 2007 – December 31, 2008.
4. The agency recouped \$1,340 of the overissuance through FS benefit recoupments from MB from February 1, 2009 – January 1, 2013.
5. On January 5, 2010, February 2, 2010 and March 2, 2010, the agency issued dunning notices to the Petitioner and to MB at 3536 N. Murray Ave., Shorewood, WI 53211.
6. On February 4, 2013, the agency issued a Repayment Agreement for FS Overpayment to the Petitioner and to MB at [REDACTED] WI 53217.
7. On February 15, 2013, the agency issued a notice of state tax refund intercept to the Petitioner and to MB at [REDACTED] WI 53217 informing them of the agency's intent to intercept \$5,161 from state tax refunds.
8. On March 2, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 overpayment of general relief benefits, overissuance 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 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.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). Federal FS regulations state as follows, in the part relevant here, as to liability for FS overpayments:

- (4) The following are responsible for paying a claim:
- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

I note that there are mandated time limits for filing an appeal. A FS appeal must be filed within 90 days of the negative action. See 7 C.F.R. §273.15(g); also Wis. Adm. Code §HA 3.05(3)(b). An appeal of a tax intercept notice must be filed within 30 days. Wis. Stat., §49.85(3). Time limits such as these are enforced if the person is notified of them.

At the hearing, MB testified that she didn't file an appeal of the overpayment when it was issued in 2008 because she was in agreement with repaying it via FS recoupment. She is no longer eligible for FS benefits and she argues she does not have the resources to repay. She further testified that she felt she was unable to file an appeal at the time of the FS overpayment notification due to severe anxiety and post-partum depression. The record was held open post-hearing for MB to provide documentation of a disability that might have prevented the filing of an appeal. No additional evidence was provided. MB further testified that she now disputes the basis for the overpayment.

MB did not dispute that she received the FS overissuance notices in December, 2008 and that the Petitioner was an adult member of the household at that time. The Petitioner claims that he did not receive any FS overissuance notices. Indeed, the agency was unable to provide evidence that such notices were issued to the Petitioner. Dunning notices were properly sent to the Petitioner in 2010 though the Petitioner testified he does not recall receiving the notices. MB and the Petitioner testified that they have lived together since July, 2007. MB testified that she made a decision in December, 2008 not to file appeals but to repay the overissuance through FS recoupment. Since that time, MB's FS benefits for the household have been reduced each month to recoup the overpayment. It stretches credibility to suggest that the Petitioner had no knowledge of the overissuance notice and did not receive any of the dunning notices sent to the correct address.

Further, the Petitioner was an adult member of the household during the period of the overpayment and is, therefore, liable for the overpayment in accordance with the regulations noted above. MB, in a corresponding decision, is liable for the overpayment. The right to appeal the merits of the overpayment expired 90 days after the issuance of the FS notification on December 12, 2008. The Petitioner and MB cannot now, more than 4 years after the overissuance notices, raise an issue for which there was a prior right to a hearing. Therefore, the only issue in this appeal is whether the agency properly issued a tax refund intercept notice.

It was undisputed at the hearing that the agency recouped some of the overissuance from the Petitioner's FS benefits. The agency produced evidence to demonstrate that \$1,340 was recouped from the Petitioner. The remaining balance for the overissuance is \$5,161. The tax intercept was properly issued to the Petitioner for an unpaid balance of a FS overissuance in the amount of \$5,161.

CONCLUSIONS OF LAW

The agency properly issued a tax refund intercept to the Petitioner for \$5,161 for an unpaid FS overissuance.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 May, 2013

\sDebra Bursinger
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 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability