



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/148068

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 14, 2013, 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 July 09, 2013, at Sheboygan, Wisconsin. The Petitioner requested the record be held open post-hearing to submit additional evidence. The record was held open until August 5, 2013.

The issues for determination are:

1. Whether the Petitioner's appeal is timely;
2. Whether the agency properly determined there is an overissuance of FS benefits to the Petitioner in the amount of \$2,497;
3. Whether the agency properly issued a tax intercept 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: Mitch Birkey

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County. His address at all times pertinent herein has been [REDACTED], Sheboygan Falls, WI 53085.
2. On February 7, 2011, the agency issued Notifications of FS Overissuance to the Petitioner at [REDACTED], Sheboygan Falls, WI 53085 informing the Petitioner of the agency's intent to recover the following overissuances of FS benefits:
  - \$378 for the period of July 1, 2006 – September 30, 2006
  - \$777 for the period of January 11, 2008 – June 30, 2008
  - \$147 for the period of December 1, 2008 – December 31, 2008
  - \$314 for the period of January 1, 2009 – December 31, 2009
  - \$881 for the period of January 1, 2010 – December 31, 2010
3. On March 2, 2011, December 2, 2011 and October 2, 2012, the agency issued Repayment Agreement notices to the Petitioner at [REDACTED], Sheboygan Falls, WI 53085.
4. On December 2, 2011, October 2, 2012, and November 2, 2012 the agency issued dunning notices to the Petitioner at [REDACTED], Sheboygan Falls, WI 53085.
5. A Marital Settlement Agreement between Petitioner and his ex-wife filed May, 2002 awards joint legal custody of each parent to their minor child. It contains a physical placement agreement as follows: the Petitioner has placement on alternate weekends commencing Thursday afternoon through Saturday. In addition to alternate weekend placement, Petitioner is to have placement on the first Wednesday afternoon through Thursday overnight after his weekend placement. The agreement also states that the parties may mutually agree to additional periods of placement at reasonable times upon reasonable prior notice. It further states that the parties may work out mutually agreed additional placement or alterations of the schedule and procedure.
6. On December 14, 2012, the agency issued a notice of state tax intercept to the Petitioner at [REDACTED], Sheboygan Falls, WI 53085 notifying the Petitioner of the agency's intercept to intercept any tax refunds or credits for his unpaid debt for excess public assistance in the amount of \$2,206. The notice indicated the Petitioner had 30 days from the date of the notice to file an appeal.
7. On March 14, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

**DISCUSSION****A. Timeliness of Appeal**

There is no dispute that every pertinent notice sent to the Petitioner with regard to the FS overissuance and state tax intercept was sent to the wrong address. Specifically, the notices were sent to [REDACTED] [REDACTED] Sheboygan Falls, WI 53085. The Petitioner's correct address is [REDACTED] Sheboygan Falls, WI 53085. The Petitioner testified that he did not receive any of the notices via mail. He received a copy of the state tax intercept notice when an unknown person hand-delivered the notice to his home after this individual received it in his mail. The Petitioner did not know the specific date that he received it from this individual. Based on the undisputed evidence that the notices were mailed to the wrong address and the Petitioner's testimony that he never received any of the notices, I find that the Petitioner's appeal is timely as to the FS overissuance as well as the state tax intercept.

## B. Overissuance of FS Benefits

Regarding the FS overissuance, the agency contends that the Petitioner improperly reported his household composition when he reported that he has at least 50% physical placement of his minor son. The agency based its determination on the Marital Settlement Agreement. This Agreement contains a schedule which grants the Petitioner less than 50% physical placement of his minor son. The Petitioner testified that he and his ex-wife agreed to an alternate physical placement schedule. The Petitioner accurately noted that the Marital Settlement Agreement allows the parties to make mutually agreed upon changes to the placement schedule contained therein. Specifically, the Petitioner testified that he has his son Thursday – Monday every other week and Wednesday-Friday in the alternate weeks. Sometimes, he switches Friday of that week with a different day during the week. This schedule places his son in his home at least 14 days out of 30 days in the month. The Petitioner testified that he usually has him more than this and that he and his ex-wife allow their son to have input into his physical placement. He testified that he and his ex-wife are able to work cooperatively on their son's schedule. He further testified that he has never gone back to court to have the agreement changed to reflect the revised schedule because his attorney advised him it was not necessary due to the original Agreement allowing for mutual revision of the schedule. In support of his assertion that he has at least 50% physical placement of his son, the Petitioner produced a statement from his son's school dated June 3, 2013 indicating that the minor child is enrolled in the Northern Ozaukee School District and that his listed address when residing with his father is [REDACTED] [REDACTED] Sheboygan Falls, WI 53085 and his address when residing with his mother is in Fredonia. It further states that the child resides with both parents during the school year.

At the hearing, the Petitioner indicated that he would get a statement from his ex-wife regarding the revised placement schedule. To date, no such statement has been submitted. Without this, the greater weight of the evidence requires me to conclude that the agency correctly determined physical placement is less than 50%. The school statement does not give any indication of how much the child lives with the Petitioner. A statement from the Petitioner's ex-wife consistent with his testimony might be sufficient. The agency worker testified he would be willing to review the case based on such evidence. If the Petitioner is able to get such a statement, he can file for a re-hearing as noted below (please note that the time periods for filing a re-hearing request are strictly adhered to). However, at this point, I conclude that the agency properly relied on the Marital Settlement Agreement to determine that the Petitioner has physical placement of his son less than 50% of the time and has properly calculated an overissuance of FS benefits based on improper reporting of household composition.

I reviewed the agency worksheets. The corrected budget shows the allotment based on a household size of one, rather than a household size of two. The overissuance is the difference calculated between the actual allotment and the corrected allotment. I find the agency properly calculated the overissuance.

## C. Issuance of State Tax Intercept

Based on the conclusion that the agency properly determined there was an overissuance of FS benefits, I also conclude that the agency properly issued a state tax intercept for the debt. I note that the agency has apparently recouped some of the overissuance. Specifically, the agency has recouped the overissuance of \$147 for the period of December 1, 2008 – December 31, 2008 and \$144 for the period of January 1, 2009 – December 31, 2009. There was no testimony of this recoupment presented at the hearing but the dunning notices of October 2, 2012 and November 2, 2012 indicate this to be the case. Thus, the tax intercept is for \$2,206.

**CONCLUSIONS OF LAW**

1. The Petitioner's appeal was timely as to the FS overissuance and the state tax intercept.
2. The agency properly determined there is an overissuance of FS benefits in the amount of \$2,497.
3. The agency properly issued a tax intercept notice in the amount of \$2,206.

**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 15th day of August, 2013

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\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 August 15, 2013.

Sheboygan County Department of Human Services  
Public Assistance Collection Unit