



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/148520

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 3, 2013, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance collection Unit (PACU) to intercept petitioner's state tax refund to recover a FoodShare (FS) overpayment, a hearing was held on May 2, 2013, by telephone.

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

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Dept. of Human Services  
P.O. Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner received FS in 2101 and 2102. The agency later determined that it failed to budget the Supplemental Security Income (SSI) income of one of the children in the household
3. On October 11, 2012, the county sent petitioner a notice informing him that he was overpaid \$1,150 in FS from August, 2011 through April, 2012, claim no. [REDACTED].

4. Petitioner did not appeal. After three dunning notices were sent by the agency, on March 15, 2013, the PACU notified petitioner that it intended to intercept his state tax refunds to help recover the overpayment. Petitioner then filed this appeal.

### DISCUSSION

Wis. Stat., §49.85(2)(a), 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, 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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). All adult members of an FS household are liable for an overpayment (which is why the other adult in the household was included as a liable party – he was part of the FS household). 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner contacted the county after receiving the overpayment notice but said only that he did not want overpayment letters to go to the other adult in the household. There is no record that he asked to appeal at that time, and he definitely did not send in a written appeal. I must conclude, therefore, that the PACU has the authority to issue the tax intercept. Because petitioner did not appeal the actual overpayment timely, he cannot do so as part of this appeal.

### CONCLUSIONS OF LAW

Petitioner's appeal of a \$1,150 FS overpayment was untimely, and thus the agency may use all legal means, including tax intercepts, to recover it.

**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 Madison,  
Wisconsin, this 6th day of May, 2013

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\sBrian C. Schneider  
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 6, 2013.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability