



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/148849

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 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 June 05, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely and whether respondent can pursue overpayment recovery by means of a tax intercept.

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: Paul Fredrickson
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. FoodShare benefits were issued to Petitioner between from August, 2010 through May, 2012. (Exhibit 2)

3. On or about October 1, 2012, the agency sent Petitioner a Notification of FoodShare overissuance, claim numbers [REDACTED] and [REDACTED], indicating that she had been overpaid FoodShare benefits, in the amount of \$4,326.00 from August 10, 2010 through May 31, 2012. FS recoupments reduced the amount owing by \$40.00.
4. In October of 2012, the agency sent Petitioner a repayment agreement. The repayment agreement was re-sent on January 3, 2013. (Exhibit 2)
5. The agency sent Petitioner dunning notices on January 3, 2013, February 4, 2013 and March 4, 2013, reminding her of the FoodShare over-issuance. (Exhibit 2)
6. On April 12, 2013, the agency sent Petitioner a notice of tax intercept. (Exhibit 2)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 22, 2013. (Exhibit 1)
8. The agency sent all correspondence to Petitioner at the address(es) of record that petitioner had provided to respondent during her enrollment in the FS program.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, **even if the overpayment was caused by agency error**. *7 C.F.R. §273.18(a)(2)* (emphasis added).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the respondent must send three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

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 benefits, 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.**

Emphasis added

Petitioner claimed that she did not get any of the notices and only became aware of the FoodShare over-issuance when she learned that her tax returns were to be intercepted. Petitioner's claims of ignorance are not credible, given her testimony that the address used by respondent was a treatment center address that she utilized; given her testimony that she did not inform the respondent of her address changes after she left the treatment program, and given respondent's testimony that recoupments had already commenced without dispute from petitioner. At the hearing, Petitioner indicated that she also wanted to appeal the FoodShare over-issuance, itself. However, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. An appeal of a negative action, including determination of an overissuance, must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). As such, her appeal of the underlying overpayment is untimely, and there is no jurisdiction to hear the merits of that portion of her appeal.

In sum, the petitioner received \$2,326.00 more in FoodShare benefits than she was entitled to from August 10, 2010 through May 31, 2012. She did not appeal this finding. Because she had an opportunity for a hearing that she did not exercise, she lost her opportunity to appeal the overpayment and does not get another opportunity to argue the validity of that action now. Because petitioner was overpaid 2,326.00 in FoodShare benefits, has repaid \$40.00, but has not repaid the remainder, the Department may recover it by intercepting her tax refund.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the underlying overpayment determination is untimely.
2. Because petitioner was overpaid 2,326.00 in FoodShare benefits, has repaid \$40.00, but has not repaid the remainder, the Department may recover it by intercepting her tax refund.

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 6th day of June, 2013

\sPeter McCombs
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 June 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability