FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FTI/149001

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 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 issue for determination is whether the issuance of the tax intercept notice was error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The Department sent notice to petitioner on 11/8/2012 informing her that she had been over issued FoodShare benefits in the amount of 825 for the period 3/26/12 to 8/31/12.
3. The Department issued additional notices on 1/3/13, 2/1/13, and 3/1/13. All notices were sent to the address on record for the FS group.

4. A tax intercept notice was sent to the same address on April 12, 2013.

5. Petitioner filed a request for hearing on April 29, 2013.

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 FoodShare and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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)

The petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but failed to file any timely appeal to DHA. All the overissuance notices were sent to the same address as the recent tax intercept notice that was appealed from. Petitioner admitted at hearing to being aware of the overissuance claim and getting at least one of the notices. But, she failed to appeal on the merits.

At hearing the petitioner did not dispute the calculation of the FS original overpayment, and did not dispute that petitioner had not filed a timely appeal of that FS overpayment. Petitioner merely argued (1) that this was an agency error and she should not be liable; and, (2) that all she really wants is a payment plan.

I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (…the department shall promptly recover all overpayments made under s. 49.19….); 7 C.F.R. § 273.18(a) ("…The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive….), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

The issuance of the tax intercept notice, and the related effort to collect, was not in error.

THEREFORE, it is **ORDERED**

That this appeal 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 21st day of June, 2013

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\sJohn P. Tedesco
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 21, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability