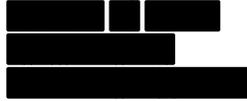




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/149917

PRELIMINARY RECITALS

Pursuant to a petition filed June 07, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 08, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Department may recoup funds related to claim [redacted] by tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Maikou Yang

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Marathon County.
2. The Department sent notice to petitioner on May 17, 2013 indicating that his taxes would be intercepted to cover a \$4,393 benefits debt related to overissuance.
3. The Department never sent petitioner a Notification of FoodShare Overissuance.
4. Petitioner filed a timely appeal from the tax intercept notice.

## 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). **A Notification of FoodShare Overissuance must be issued.** *FoodShare Eligibility Handbook, §7.3.1.8.*

An appeal of a negative action, including a determination an overissuance, must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). That, of course, assumes a person is notified of the overissuance determination.

All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

*FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4);*

Once an overpayment is established, *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 food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department 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 notice is to be sent to the last known address. *Id.*

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

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.

An appeal of the tax intercept notice must be filed within 30 days of the tax intercept notice. §49.85(3)(a)2., *Stats.* If it is not filed within that time limit the Division of Hearings and Appeals loses jurisdiction, i.e., legal authority to make a decision on the merits of a matter.

At the time of hearing, the agency representative conceded that there is no evidence to demonstrate that Petitioner was ever sent an original notice of the FoodShare overissuance.

In this case, it appears that petitioner was not receiving benefits, but instead may have lived for some period in a household with a girlfriend who was receiving FS. If no FS overissuance notice was ever sent then petitioner must still receive notice and have an opportunity to appeal the merits of the overissuance determination. Only then could a tax intercept be proper.

**CONCLUSIONS OF LAW**

The tax intercept was issued in error as no notification of the overissuance was ever sent to petitioner.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department with instruction that it remove the overissuance determination and the tax intercept action, cease all collection efforts, and return to petitioner any sums already recouped through a tax intercept relating to this FS overissuance (claim # [REDACTED]). These actions must be completed within 10 days.

**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 24th day of July, 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 July 24, 2013.

Marathon County Department of Social Services  
Public Assistance Collection Unit