FH
[redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FTI/150297

## PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 29, 2013, at Madison, Wisconsin.

The issues for determination are: a) whether the petitioner's appeal of her May 17, 2013 FoodShare (FS) tax intercept is timely; and b) whether the petitioner had a prior opportunity for a hearing on the issue of whether the Department correctly sought recovery of a FS overpayment to collect overpayments of FoodShare benefits during the period of May 3, 2012 to September 30, 2012.

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: Michelle Furr, overpayment specialist
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a 19 year old resident of Dane County.
2. The petitioner received FoodShare (FS) benefits for a FS household of one.

3. Petitioner resided with her parents, but failed to report her correct household composition to the county agency.
4. On December 10, 2012, the county agency issued a Notification of Food Stamp Overissuance to the petitioner at her correct address of record that it had opened Claim no. [redacted]. That notice indicated that the county agency was seeking repayment of $987.00 in FS benefit overpayments during the period from May 3, 2012 to September 30, 2012, due to petitioner's failure to report that her parents resided in her FS household and their income.
5. The petitioner did not file any timely appeal to the Division of Hearings and Appeals (DHA) regarding her December 10, 2012 FS overpayment notice.
6. The Department's Public Assistance Collection Unit (PACU) sent a May 17, 2013 FS tax intercept notice to the petitioner at her correct address of record notifying her that the remaining unpaid FS overpayment of $987.00 would be recovered through interception of her state or federal income taxes or credits. That May 17, 2013 notice stated that the remaining $987 FS overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. That FS Tax Intercept Notice was not returned as undeliverable.
7. The Petitioner telephoned the Division of Hearings and Appeals (DHA) on June 27, 2013 to verbally request (file) her appeal of the May 17, 2013 FS tax intercept notice.
8. The petitioner was unable to establish that she had timely filed any FS overpayment or tax intercept appeal to DHA prior to June 27, 2013.
9. As of July 29, 2013, the remaining amount of petitioner's FS overpayment was $987.00.

## DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue 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 § 46.254(3).

An administrative law judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on June 27, 2013 which is 40 days after the date of the May 17, 2013 FS tax intercept notice which was sent to the petitioner.

During the July 29, 2013 hearing, petitioner at first admitted that she received the May 17, 2013 FS tax intercept notice (Exhibit 1). Later in the hearing, the petitioner alleged in vague terms that she did not receive Exhibit 1 until sometime "later." However, the petitioner was unable to refute that the FS overpayment and FS tax intercept notices were all sent to petitioner at her correct address.

The petitioner did not establish any problems with her mail delivery, and was unable to provide any good cause for her failure to file her tax intercept appeal at DHA until June 27, 2013. There is no evidence in the record that the May 17, 2013 tax intercept notice was returned as undeliverable. As a result, the petitioner

filed her FS tax intercept appeal on June 27, 2013 which was more than 30 days after the date of the May 17, 2013 tax intercept notice that was mailed to her. Therefore, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly imposed a May 17, 2013 FS tax intercept against the petitioner's taxes, as her appeal is untimely

However, even if the petitioner's appeal had been timely, 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 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)

As noted in Findings of Fact #4 and #5 above, the petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but petitioner failed to file any timely appeal to DHA. There have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, 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

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed a May 17, 2013 FS tax intercept against the petitioner's taxes, as the petitioner's appeal is untimely.

2. The Department may continue to certify the remaining FS overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund.

**THEREFORE, it is** **ORDERED**

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 9th day of August, 2013

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\sGary M. Wolkstein
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 9, 2013.

Dane County Department of Human Services
Public Assistance Collection Unit