



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/150397

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**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 Monroe County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on August 12, 2013.

The issue for determination is whether the petitioner's appeal of her FS-related tax intercept is timely.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Tom Miller

Monroe County Department of Human Services  
Community Services Bldg.  
14301 Cty Hwy B, Box 19  
Sparta, WI 54656-4509

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County who resided with [REDACTED] [REDACTED] during the FS overpayment period of August 20, 2012, to November 30, 2012.

2. On August 28, 2012, the respondent notified petitioner that it intended to terminate her FS benefits effective October 1, 2012, because her household income exceeded program limits.
3. Petitioner filed an appeal of the termination on September 3, 2012.
4. Following a hearing, Administrative Law Judge Ishii issued a decision dated October 19, 2012, finding that petitioner resided with [REDACTED] [REDACTED], and that her household income exceeded program limits.
5. Petitioner did not appeal ALJ Ishii's decision.
6. On December 5, 2012, the respondent issued a Notification of FoodShare Overissuance to the petitioner. That notice indicated that the county agency was seeking repayment of \$1,243.00 in FS benefit overpayments during the period of August 20, 2012, to November 30, 2012, due, in part, to petitioner's failure to report that Mr. [REDACTED] was in the home. The notice further indicated that petitioner had 90 days to file an appeal of the overpayment decision.
7. Petitioner did not file an appeal of the December 5, 2012, overissuance notice.
8. The Dane county agency sent Dunning notices to the petitioner regarding this FS overpayment on February 4, 2013, March 4, 2013, and April 2, 2013.
9. The Department's Public Assistance Collection Unit (PACU) sent a May 17, 2013, FS tax intercept notice to the petitioner notifying her that the unpaid FS overpayment of \$1,243.00 would be recovered through interception of her state or federal income taxes or credits. That notice stated 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.
10. The Petitioner filed her fair hearing request with the Division of Hearings and Appeals (DHA) on June 27, 2011.

### DISCUSSION

Wisconsin law provides that the respondent 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. Wis. Stat. § Statute section 46.254. 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 more than 30 days after the date of the May 17, 2013, FS tax intercept notice which was sent to the petitioner.

During the hearing, petitioner argued that the investigation into her household composition was inadequate, as was the ensuing appeal hearing format, which was conducted via telephone. However, it is notable that petitioner had an opportunity to both (a) argue that the investigation was inadequate and (b) appeal the hearing decision. The hearing was not decided in her favor, and she did not appeal.

Based upon the record in this matter, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly pursued a 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 6 and 7, above, the petitioner had the opportunity for a prior hearing on the merits of her FS overpayment but failed to file any timely appeal to DHA.

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

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

**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 23rd day of August, 2013

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\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 August 23, 2013.

Monroe County Department of Human Services  
Public Assistance Collection Unit