



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/150413

PRELIMINARY RECITALS

Pursuant to a petition filed July 03, 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 July 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment.

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: L. Howse

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner is 21 years of age – DOB 7/13/1992.
2. Petitioner was sent a Notification of FS Overissuance dated November 14, 2012 that informed Petitioner that she was liable for a FoodShare overissuance for the period from September 1, 2011

through August 31, 2012 in the amount of \$2201.00. The reason for the overpayment was agency error - that the agency incorrectly counted household income. The reason for Petitioner's liability was that she was an adult member of the household.

3. Though the end date on the notice is August 31, 2012 a review of the overpayment worksheets reveals that the overpayment actually ended in May 2012. A post hearing submission by the agency shows that Petitioner was reported out of FoodShare household involved here as of April 2012, though this report was not until May 2012. (Changes reported in one month are effective in the next month. *See FSH, §6.1.3.3.*) The notice was sent to 4046 N. 13th in Milwaukee. This is Petitioner's mother's address.
4. Petitioner applied for FoodShare on her own and on that application she reported that she was homeless and [REDACTED] was used as her address. The application was denied and the case never opened. The agency was asked to provide the date of the application post hearing and did so – the application was filed on December 5, 2012.
5. Dunning Notices were sent to Petitioner at [REDACTED] Street and dated 1/3/13, 2/4/13 and 3/4/13.
6. A State of Wisconsin tax intercept notice, dated April 12, 2013, was sent to Petitioner at [REDACTED] and informed Petitioner that her tax refunds were subject to intercept to repay a \$2121.00 overpayment of FoodShare benefits. It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.
7. This appeal was filed on July 3, 2013. The address noted on the appeal was the above address, again her mother's address.

DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

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)*.

Further, 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 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. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, *Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See *FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR, §273.15(g).

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept.

The testimony made clear that even though Petitioner moved from her mother's home in January 2012 she has continued to use that address as her mailing address for all purposes. The record was held open to give Petitioner a chance to submit any kind of documentation showing that she was living elsewhere but nothing was received by the Division of Hearings and Appeals. Given these factors, I cannot find that the original November 14, 2012 notice of overpayment was sent to the wrong address. Thus the appeal is untimely as to that notice.

The dunning notices and tax intercept were sent to [REDACTED] While this was the address reported on the December 2012 FoodShare application; that application was denied so it is hard to see how Petitioner had an obligation to check for mail at [REDACTED] Further, she has filed tax returns and has a driver's license and uses her mother's address as a mailing address. A modicum of effort would have shown that this would have been the better address for the dunning notices and tax intercept notice. I am, therefore, finding the appeal to be timely as to the tax intercept. This does not, however, help the Petitioner as the scope of the tax intercept hearing is limited in that it cannot address issues, here the validity of the underlying overissuance, for which there was a prior right to a hearing. *Again, Wis. Stat. § 49.85(4)(b).*

CONCLUSIONS OF LAW

1. That Petitioner's July 3, 2013 appeal is untimely with respect to the November 14, 2012 notice of FoodShare overissuance.
2. That Petitioner's July 3, 2013 appeal is timely with respect to the April 12, 2013 tax intercept notice because it is not clear that the agency used the correct address.
3. That the Department may, however, certify the sum of \$2121.00 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund as the scope of the hearing relative to a tax intercept excludes issues that could have been dealt with in an earlier hearing.

THEREFORE, it is

ORDERED

That this matter 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 Milwaukee,
Wisconsin, this 5th day of September, 2013

\sDavid D. Fleming
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 September 5, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit