



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/150446

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Winnebago County Department of Human Services in regard to collection of FoodShare (FS) benefits overpayment, a telephone hearing was held on July 29, 2013.

The issue for determination is whether the respondent correctly sought to intercept the Petitioners' state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Janet Herzberg

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Iowa County.
2. The petitioner is the son of [redacted]. From July 2010 through September 2011, petitioner was included as a member of [redacted]'s FS household.

3. ██████ attained the age of 18 in December, 2010. On March 12, 2012, Administrative Law Judge Nancy Gagnon issued a decision confirming, in part, the establishment of an overpayment of FS benefits to petitioner's household in the amount of \$2,266.00 from July, 2010 through September, 2011.
4. ██████ ██████ and petitioner entered into a repayment agreement with the respondent. The terms of the agreement require that ██████ ██████ pay \$62.94 each month, and the petitioner pay \$36.00 each month. ██████ ██████ and petitioner are current on their monthly payments, and have not been in default of any terms of the repayment agreement.
5. As of the date of hearing, approximately \$292.00 remained due and owing under the repayment agreement.

DISCUSSION

The respondent's policy on repayment agreements is that as long as the repayments are being timely made, the case should not be referred for income tax refund interception:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSWH, 7.3.2.12.

This language was noted in ALJ Gagnon's March, 2012, Decision. The respondent's representative was unable to provide any justification for the proposed tax intercept, and she confirmed that the petitioner was not in default of the repayment agreement. The respondent noted that it did not directly issue the tax intercept notice; that was prepared by the Public Assistance Collection Unit (PACU). No representative of PACU attended the hearing to explain why a tax intercept was pursued despite petitioner's compliance with the terms of the repayment agreement. I find no basis or reason for the respondent's deviation from its own written policy, and cannot affirm its pursuit of a tax intercept here.

CONCLUSIONS OF LAW

The petitioner has a repayment agreement with the respondent pertaining to a FS overpayment, and petitioner is not in default of any terms of said repayment agreement.

THEREFORE, it is

ORDERED

That the matter is remanded to the respondent and the Department of Children and Families (PACU) with instructions to rescind the state income tax refund/credit interception of record related to FS overissuance Claim No. ██████, as entered against petitioner, and to cease all current tax intercept activities premised on that claim, for so long as the petitioner complies with the terms of his repayment agreement with the respondent. These actions shall be completed within 10 days of the date of this Decision.

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 September, 2013.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 9, 2013.

Winnebago County Department of Human Services
Public Assistance Collection Unit