



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/150995

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Columbia County Health & Human Services in regard to FoodShare benefits (FS), a hearing was held on September 3, 2013, by telephone.

The issue for determination is whether the Department correctly sought to intercept the petitioner's 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: Jeanette Gessner, ES Spec.
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Columbia County.
2. The petitioner was overpaid FS of \$3,287 from July 1, 2012, through November 30, 2012, due to agency error. On February 11, 2013, the county agency sent a *Notification of FS Overissuance*

and worksheets (claim # [REDACTED]) to the petitioner at her correct and last known address, advising her of this fact. Hearing rights information was contained in that *Notification*, and the petitioner appealed from that *Notification*. Exhibit 1, item #2.

3. In its initial computation of the petitioner's FS benefits, the agency failed to include the following 2012 income from the petitioner's husband: \$1,787.73 from July, \$5,310.83 from August, \$2,208.14 from September, \$3,276.01 from October, and \$337.31 from November.
4. The petitioner's appeal was assigned the Division of Hearings and Appeals case number #FOP-146083, and was scheduled for hearing before Administrative Law Judge Schneider. The petitioner did not appear, and did not request rehearing or file a circuit court appeal.
5. The Department issued three dunning letters to the petitioner (April 2, May 2, and June 4, 2013), because she made no payment against the overpayment in the months of March, April and May, 2013. She also made no payments against the overpayment thereafter.
6. On July 12, 2013, a state tax refund interception notice was issued to the petitioner. That notice advised that \$3,287 remained to be recovered on the above claim, and any appeal should be filed within 30 days. That notice was sent to the last known address for the petitioner, and timely appealed from the interception notice.

DISCUSSION

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 overissuance of Food Share benefits.

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)

The petitioner has had a prior opportunity for hearing on the merits of the overpayment. She filed a hearing request to challenge that overpayment but did not appear. She asserts that she had gall bladder surgery around the time of the hearing date, but did not request a rescheduling of her hearing, or request rehearing after she received the dismissal order. The petitioner also offered no documentation of her surgery date in this hearing record. The petitioner has not established good cause for not following through with her earlier hearing date, and she does not get another opportunity to argue the validity of the overpayment decision here.

The determination by the county agency that the Petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits. *See*, 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. § 49.85. The petitioner did not establish that

the Department has erred in its arithmetic in arriving at the current amount to be intercepted (which is the primary function of an interception hearing).

CONCLUSIONS OF LAW

1. The Department correctly certified the sum of \$3,287 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition 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 Madison,
Wisconsin, this 24th day of September, 2013

\sNancy J. Gagnon
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 24, 2013.

Columbia County Health & Human Services
Public Assistance Collection Unit