



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/151113

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on September 10, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department of Health Services correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Diane Van Asten, fraud investigator
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Brown County.
2. The county agency issued a Notification of FS Overissuance on claim # [redacted] to the casehead, [redacted], and the petitioner (separately), on June 24, 2011. The Notification

advised that they had been overpaid \$1,388 in FS from July 2010 through May 2011. The cause of the overpayment was [REDACTED]'s failure to report the petitioner's presence (and income) in the household to the agency. The petitioner did not receive his *Notification* due to his incarceration. The dunning letters from February, March and April 2012, were all sent to the petitioner at the incorrect (for him) Eastman Avenue address.

3. The petitioner resided with [REDACTED] from July 2010 into early February 2011. As of February 1, 2011, the couple resided at [REDACTED]. On February 4, 2011, he was arrested, and he remained incarcerated until July 12, 2011. His Judgment of Conviction then placed him on probation for three years, and ordered that he have no contact with Ms. [REDACTED].
4. [REDACTED] did not advise the county agency that the petitioner was incarcerated from February through July, 2011; hence, she did not advise the agency of his correct address. The petitioner testified that he was unaware of [REDACTED]'s activities and communications to the agency regarding FoodShare benefits, so he was unaware of his responsibility to report his changed mailing address.
5. The petitioner lived in a shelter from October 2011 through the end of April 2012. He reported this address to the agency. Beginning in approximately May 2012, he resided at [REDACTED]. He began living at [REDACTED], his current address, in February 2013.
6. On May 11, 2012, the Department issued a Wisconsin income tax refund interception notice to the petitioner at [REDACTED]. The notice advised the petitioner that his income tax refund could be intercepted to recover an FS overpayment of \$1,388.00, based on claim # [REDACTED], for the period of July 1, 2010 through May 31, 2011. The petitioner appealed therefrom on July 31, 2013.

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 overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or childcare 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). In this case, the petitioner was mailed a notice that the Department intended to take a setoff via tax refund interception on May 11, 2012. The time limit for appealing from this interception notice is 30 days. However, I believe that the petitioner did not receive this notice, due to confusion over his current address. Therefore I will take jurisdiction over the question as to whether the *interception action* was valid. However, the conclusion that the interception decision can be reviewed does not automatically mean that I will review the merits of the overpayment decision that led to the interception action.

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)

I conclude that the petitioner did not have a prior hearing or opportunity for hearing on the merits of the overpayment. The petitioner credibly testified that he did not receive the *Notification of FS Overissuance* from June 2011. He has established that he was in jail when the *Notification* was mailed to his former residence (rather than the jail). Thus, he did not get the notice. Ms. [REDACTED], the FS casehead, did not truthfully advise the agency of the petitioner's household status or whereabouts, which caused the agency to mail the petitioner's *Notification* to an incorrect address. However, that is not the petitioner's fault. Therefore, I found it credible that Mr. [REDACTED] was not notified of the overpayment, and his challenge to the underlying overpayment is timely.

At hearing, the petitioner did nothing to refute the agency's assertion that he resided with [REDACTED] (unreported) from July 2010 through early February 2011. Thus, his overpayment co-liability with [REDACTED] for the July 2010 through February 2011 period stands. The petitioner provided documentation of his February 4, 2011 arrest, incarceration, and subsequent conviction. Because he was not residing with [REDACTED] at any time from March through May 2011, he was not a member of her household during those months, and he is not liable for repaying the overpayment amount attributable to those three months.

CONCLUSIONS OF LAW

1. The petitioner's July 2013 appeal was timely for challenging the Department's tax refund interception action, because he did not receive the interception notice.
2. The petitioner's July 2013 appeal was timely for challenging the county agency's FS overpayment on claim # [REDACTED] with respect to the petitioner only, as he did not receive the June 2011 *Notification of FS Overissuance*.
3. The Department correctly seeks to recover from the petitioner that portion of FS overpayment claim # [REDACTED] that is attributable to the months of July 2010 through February 2011.
4. The Department shall not seek recovery from the petitioner on this FS overpayment claim for the months of March through May 2011.

THEREFORE, it is

ORDERED

That the petition herein be *remanded* to the Department's agent, PACU, to cease collection efforts, against the petitioner only, on claim # [REDACTED], for the months of March through May, 2011 only. (Recovery may continue against Ms. [REDACTED]). This action shall be taken within 10 days of the date of this decision. In all other respects, 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 12th 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 12, 2013.

Brown County Human Services
Public Assistance Collection Unit