



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/152388

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2013, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Waushara County Human Services in regard to Medical Assistance, a hearing was held on November 06, 2013, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in its issuance of the tax intercept notice.

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: Roxann Binkowski
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.
2. Petitioner received FS during the overpayment period which is 3/1/12 to 5/31/12.
3. On May 31, 2012, petitioner applied for FS and claimed that she was now living in Wisconsin after time in another state. She was enrolled in FS.

4. On June 14, 2012, the Department sent a Notification of FoodShare Overissuance to petitioner at [REDACTED] indicating a \$1,101 overissuance for the period from 3/1/12 to 5/31/12. This Notification related to claim # [REDACTED]. This notice included rights and instructions relating to appeal. The address to which the notice was sent was the same address on the open FS case.
5. The Department sent a Repayment Agreement for FoodShare Overpayment to petitioner on July 3, 2012 to the same address.
6. On July 3, 2012, the Department also sent a Notice and Repayment Agreement for Medical Assistance/Badgercare/Badgercare Plus Overpayment to petitioner at the [REDACTED] address relating to an overpayment of \$758.70 in claim # [REDACTED]. This Notice also included appeal rights and instructions.
7. Petitioner was in regular contact with the agency from 5/31/12 to as late as 4/25/13. The FS overpayment was being recouped thorough petitioner's monthly allotment during this period resulting in partial recovery.
8. The Department sent a Repayment Agreement for FoodShare Overpayment to petitioner on June 4, [REDACTED] address in [REDACTED] indicating an outstanding balance of \$766.
9. A tax intercept notice was sent to petitioner on 9/13/13 at the [REDACTED] address in [REDACTED].
10. Petitioner filed a request for hearing on September 26, 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 FoodShare 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)

The petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but failed to file any timely appeal to DHA.

At the time of hearing, and in her request for hearing, petitioner wished to argue the merits of the original determination of overpayment. But, the time for that argument was in an appeal of the initial overpayment notice.

I must conclude that the interception action is appropriate. 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

The issuance of the tax intercept notice, and the related effort to collect, was not in error.

THEREFORE, it is ORDERED

That this appeal 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 21st day of November, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 November 21, 2013.

Waushara County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability