



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/152700

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on November 27, 2013, at Janesville, Wisconsin. At the request of the parties, the record was held open for the county agency to submit a closing argument to DHA and petitioner by December 11, 2013, and until December 27, 2013 for petitioner's responsive closing argument to be sent to DHA and the county agency. Both parties timely submitted their written arguments to DHA which are received into the hearing record.

The issue for determination is whether the petitioner remains liable for the reduced FS tax intercept of \$2,672 from the period of August, 2012 through December, 2012 due to joint and several liability with his ex-wife due to residing in her FS household during that period.

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, Room 651
Madison, Wisconsin 53703

By: Mary [REDACTED], ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who resided with his ex-wife, [REDACTED] (a/k/a Bare), in her household until December 12, 2013.
2. Petitioner and his wife divorced on or about August 12, 2013.
3. Petitioner's ex-wife received FoodShare (FS) benefits during the period of September 12, 2012 through March 31, 2013 for her FS household.
4. Petitioner resided in his ex-wife's FS household during the period of September 12, 2012 to December 12, 2012, when [REDACTED] reported to the county agency that Mr. [REDACTED] moved out of her home to his own residence.
5. Petitioner was also in [REDACTED]'s BadgerCare Plus household during the period of August 1, 2012 to December 12, 2012.
6. The county agency sent March 14, 2013 FS Overpayment Notices to the petitioner and petitioner's ex-wife stating that she received a FS overpayment of \$4,038 in Claim # [REDACTED] during the period of September 12, 2012 to March 31, 2013, due to her failure to report earned and unearned income from several sources causing the FS and BC overpayments.
7. Neither petitioner's ex-wife nor petitioner requested a hearing before DHA regarding the FS or BC Overpayment notices.
8. The Department sent an August 16, 2013 FS tax intercept notice to the petitioner at the incorrect address of his ex-wife stating that petitioner received \$4,038 in overpaid FS benefits during the period of September 1, 2012 to March 31, 2013.
9. The Department sent another September 20, 2013 FS tax intercept notice to the petitioner at his correct address stating that he is liable for the FS overpayment of \$4,038 indicated in Finding of Fact #8 above due to joint and several liability. This was the first notice sent to the petitioner at his correct address.
10. Department collection specialist [REDACTED] sent an October 1, 2013 letter to petitioner's attorney indicating that the Department of Children and Families (DCF) was not a party to the divorce settlement agreement and is not bound by the divorce decree. Mr. [REDACTED]'s liability is joint and several; therefore, the debt is not split equally between the parties but rather both are liable for 100% of the debt. Mr. [REDACTED] has the right to pursue a small claim action against [REDACTED] Bare.
11. ES Supervisor Mary [REDACTED] sent a December 10, 2013 closing argument to DHA which confirmed the following: a) on December 12, 2012, petitioner's ex-wife reported that Mr. [REDACTED] moved out of her home to his own residence, and the county agency failed to timely act upon that report; b) the county agency stipulates that [REDACTED] should not be liable for the FS or BC overpayment of benefits after he left [REDACTED]'s home (January, 2013 through March, 2013); c) the county agency stipulated to remove petitioner as a liable party for the FS overpayment of \$1,366 and BC overpayment of \$422 during the period of January, 2013 through March, 2013; d) the petitioner remains liable for FS overpayment of \$2,672 and BC overpayment of \$3,696.26 during the period of August, 2012 through December, 2012 during which time petitioner was in his ex-wife's FS and BC households.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue 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 § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed timely with the Division of Hearings and Appeals as petitioner's FS tax intercept notice was sent incorrectly to his ex-wife's address and not sent to him until September 20, 2013.

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 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 petitioner is questioning why the FS overpayment and FS tax intercept were seeking recovery from him when [REDACTED] [REDACTED], his ex-wife was the FS casehead during the FS and BC overpayment periods. However, the food stamp regulations permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household**. Based upon the evidence in the hearing record, the petitioner was an adult member of the FS household of [REDACTED] [REDACTED] which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

*Establishing claims against households. All adult household members shall be **jointly and severally liable** for the value of any overissuance of benefits to the household. The State agency shall establish a claim against...any household which contains an adult member of another household that received more food stamp benefits than it was entitled to receive.*

(Emphasis added).

As a result, the petitioner is jointly and severally liable along with [REDACTED] [REDACTED] for the FS tax intercept. The petitioner did not dispute Ms. [REDACTED]'s December 10, 2013 re-calculation of the FS original overpayment amount of \$4,038 to the reduced liability amount of \$2,672. See Finding of Fact #11 above.

During the November 27, 2013 hearing and in his December 17, 2013 statement, petitioner admitted that he resided with his wife, [REDACTED] [REDACTED] from August, 2012 to December 12, 2012. However, petitioner argued that he should not be held liable for his wife's FS or BC overpayment because Section #5 of their

divorce decree indicates that: “██████████ ██████████ shall be solely responsible and hold ██████████ ██████████ harmless for any potential liability to the State of Wisconsin for reimbursement of State aid for government benefits provided during the parties’ marriage.” However, that divorce order and decree is between the parties of petitioner and his ex-wife. The State of Wisconsin was not a party to that Divorce Order. See Finding of Fact #10 above. As a result, petitioner remains liable for the FS and BC overpayment during the period that he resided in his ex-wife household. The petitioner’s legal remedy is small claims court or to return to Rock County Court Judge Bates in Case No. 13 FA 170 to request that the Judge order reimbursement by his ex-wife to him for his share of the FS and BC overpayment based upon that same Section 5 of the July, 2013 Divorce Judgment.

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. Accordingly, based upon the above, I conclude that the Department is correctly pursuing the reduced FS tax intercept of \$2,672 against the petitioner.

CONCLUSIONS OF LAW

- 1) The petitioner remains liable for the reduced FS tax intercept of \$2,672 from the period of August, 2012 through December, 2012, due to joint and several liability with his ex-wife due to residing in her FS household during that period.
- 2) The Department may continue to certify the remaining FS overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund if the remaining FS overpayment has not already been fully recouped from petitioner’s ex-wife.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to reduce the petitioner’s FS liability for FS tax intercept to \$2,672 for the period of August, 2012 through December, 2012. In all other respects, the petition for review is hereby 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, Room 651, 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 January, 2014

\sGary M. Wolkstein
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 January 21, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit