



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/154433

PRELIMINARY RECITALS

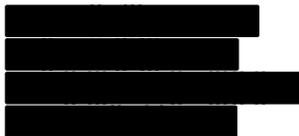
Pursuant to a petition filed December 24, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Yia Xiong and Pamela Hazley
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) was a resident of Milwaukee County.

2. Petitioner was sent a Notification of FS Overissuance dated January 13, 2012 that informed Petitioner that she was liable for a FoodShare overissuance for the period from October 1, 2010 through September 30, 2011 in the amount of \$2400.00. The reason for the overpayment was that Petitioner moved to Illinois and continued to receive FoodShare from Wisconsin. The move was not reported. The notice was sent to a PO address in Milwaukee.
3. Dunning notices dated March 2, 2012, April 3, 2012 and May 2, 2012 were sent to Petitioner at the PO Box.
4. A State of Wisconsin tax intercept notice, dated June 6, 2012 was sent to Petitioner at the Milwaukee PO Box.
5. By the time of the hearing the balance due on the overpayment alleged here was \$646.11. Apparently the recovery has been from a monthly recoupment from Petitioner's Social Security check as the State reported the FoodShare overpayment to the Federal government as the FoodShare program is a federally funded program.

### DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(2)*.

Once an overpayment is established, *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 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)* but is limited:

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 time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g)*.

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept. The agency did send the proper notices to Petitioner's last known address as required by §49.85, Stats. Further, there have been regular recoupments from Petitioner's Social Security checks

but the only inquiry Petitioner made of Wisconsin about that recoupment was a phone call, apparently to the Milwaukee County Clerk of Courts. Petitioner notes that she has significant medical problems including memory problems caused by a brain aneurism and surgery. Nonetheless, there is no good cause for failing to appeal timely and I cannot find Petitioner's appeal to be timely as to the overpayment or tax intercept.

I also note two other things. First, even if timely, I could not find for Petitioner as she had moved out of State and was not eligible for FoodShare issued through the State of Wisconsin. *FSH*, §3.2.1. Second, once a FoodShare overpayment is past due 180 days a state is required to report that to the U.S. Treasury for collection by the Federal government. *7 CFR 273.18(n)*. That seems to be the reason Petitioner's Social Security checks have been subject to the recoupment that has repaid about ¾ of this overissuance. That report date is not noted in agency records but had to have been by the end of 2012.

### **CONCLUSIONS OF LAW**

1. That Petitioner's December 24, 2013 appeal is untimely with respect to the January 13, 2012 notice of FoodShare overissuance.
2. That Petitioner's December 24, 2013 appeal is untimely with respect to the June 15, 2012 tax intercept notice.
3. That the State of Wisconsin was required by Federal law to report Petitioner's unpaid FoodShare overissuance to the United States Treasury when it was 180 days past due; here some time before the end of 2012.

**THEREFORE, it is**

**ORDERED**

That this matter 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, 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 Milwaukee,  
Wisconsin, this 17th day of February, 2014

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\sDavid D. Fleming  
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 February 17, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit