



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/154646

PRELIMINARY RECITALS

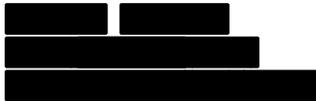
Pursuant to a petition filed January 11, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Fond du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2014, at Fond du Lac, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the petitioner's income tax refund to collect overpayments of FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Ms. D. Bohlman, ES Spec.
Fond du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Fond du Lac County.
2. The petitioner was overpaid FS of \$1,806 from January 1, 2012, through September 30, 2012, due to client error. On April 15, 2013, the county agency sent a Notification of FS Overissuance and worksheets (claim # [redacted]) to the petitioner at his correct and last known address, advising

him of this fact. Although hearing rights information was contained in that *Notification*, the petitioner did not *timely* appeal (90 days). Exhibit 3e.

3. The petitioner filed a hearing request to challenge the April 15, 2013 Notification on July 30, 2013. A hearing was held before Judge Schneider of this office, and he issued a decision dismissing that appeal on September 9, 2013. *See*, Decision #FOP/150988. The basis for dismissal was that the petitioner had filed his hearing request too late, thereby depriving the Judge of jurisdiction to review the matter. Judge Schneider's decision was not appealed to circuit court. The agency then issued three dunning letters to the petitioner, without result.
4. The county agency determined that the petitioner was also overpaid for another time period. On July 30, 2013, the agency sent a *Notification of FS Overissuance* and worksheets (claim # [REDACTED]) to the petitioner at his correct and last known address, advising that he had been overpaid \$96 for the October 1, 2012 through March 31, 2013 period. The agency then issued three dunning letters to the petitioner, without result.
5. The petitioner did not file a hearing request to challenge the overpayment determination dated July 30, 2013, within 90 days.
6. On December 13, 2013, a state tax refund interception notice was issued to the petitioner. That notice advised that \$1,806 remained to be recovered on claim # [REDACTED], and any appeal should be filed within 30 days. Confusingly, the Department sent a federal interception notice to the petitioner on December 20, 2013, advising that interception of federal funds would occur with respect to both claims # [REDACTED] and # [REDACTED], for a total collection of \$1,902 (\$1,806 + \$96). On January 11, 2014, the petitioner timely appealed from the interception notices.
7. The petitioner has made no payment against either claim.

### 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 first overpayment. He did not file a hearing request to challenge the first overpayment determination within the 90 day period. He went through the fair hearing process with another DHA Judge, and his appeal was dismissed for untimely filing. The petitioner does not get another opportunity to argue the validity of the January through September 2012 overpayment decision here.

A similar rationale applies to the second overpayment. The petitioner never filed a hearing request to challenge the October 2012 – March 2013 overpayment, unless this January 2014 hearing request is treated as a challenge to the second overpayment. If that was the intent, it is beyond the 90-day hearing request period created by federal rule. 7 C.F.R. § 273.15(g). The primary purpose of a tax interception hearing is to be sure that the petitioner has been credited for any payments made. The petitioner does not claim that he has made payments. This is also an opportunity to consider the merits of the overpayment if unusual circumstances deprived the person of an earlier hearing opportunity. An example would be that the *Notification of Overissuance* was sent to an out-of-date address. There is no indication that the petitioner did not receive the *Notifications* in this case. They were sent to an address that is still used by the petitioner. Thus, no jurisdiction is present to review the validity of the second overpayment determination.

However, even if I had reviewed the merits of the second overpayment determination, I would have upheld the agency. There is no dispute that the agency correctly budgeted gross income for the petitioner from his wife's job at [REDACTED] of \$2,299.21 every month from October 2012 through March 2013. This income figure is the average of quarterly wage payments reported by [REDACTED] to the State. The petitioner produced no wage history or paystubs at hearing to show that these wage figures were incorrect. Based on that income, the agency issued FS allotments to the household of two of \$16 every month from October 2012 through March 2013. The gross income limit for a group of two was \$2,522, which is only slightly above the income the petitioner reported. However, the petitioner failed to report his monthly stipend of \$262.50 monthly. When his stipend was added to the other household income, the result was that the household was over the \$2,522 limit, and the \$16 allotments were all overpayments. The petitioner did state at hearing that he reported his stipend to someone in 2012. However, even if he did so (making the overpayment the fault of the agency), federal FoodShare rules required the recovery of overpayments caused by agency error if the overpayment is less than one year old at the time the *Notification* is issued. 7 C.F.R. § 273.18(a)-(c). That is the case here (July 2013 *Notification* for a period beginning in October 2012). Finally, the petitioner vaguely asserted that he did not receive FS for all of the overpayment months in question. I have reviewed the computer record of payments made, and his household was issued a \$16 allotment for every month from October 2012 through March 2013; that screen print will be attached to his copy of this Decision.

The determination by the county agency that the petitioner was overpaid and the overpayment is collectable is affirmed. The Department is required to recover all overpayments of public assistance benefits. *See*, 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. 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 \$1,802 on claim # [REDACTED] as an amount due and proceeded with the action to intercept the petitioner's income tax refund.
2. The petitioner's instant appeal is not timely for the purpose of challenging the merits of overpayment claim # [REDACTED], as his January 2014 appeal is more than 90 days from the July 30, 2013 overpayment notice.
3. If proper interception notice has been given, the Department may also certify the \$96 from claim # [REDACTED] as an amount due and proceed 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, 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 5th day of March, 2014

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\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 March 5, 2014.

Fond Du Lac County Department of Social Services  
Public Assistance Collection Unit