



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/154721

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, 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 February 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the FoodShare program correctly sent Petitioner notice of tax intercept tax issued to collect an overissuance of FoodShare benefits.

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: Jose Silvestre

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]) is a resident of Milwaukee County.
2. Petitioner was sent a notice of FoodShare overissuance dated November 4, 2013. The notice informed Petitioner that his FoodShare household had been overissued FoodShare benefits in the amount of \$2055.00 for the period from November 1, 2012 through March 31, 2013.
3. Petitioner was sent a tax intercept notice dated December 13, 2013 that informed Petitioner that his taxes were subject to intercept to repay a public assistance debt of \$2055.00.

4. The overpayment involved here came about because Petitioner's earned income was not reported by his mother. He turned age 18 on August 22, 2012. Overpayment worksheets included in that case show that gross household income with Petitioner's son's income was well in excess of \$3000.00 per month for each month involved here. The household size was 5 during the time of the overpayment.

DISCUSSION

Once household income exceeds 130% of the federal poverty level it must be reported. *FoodShare Wisconsin Handbook (FSH)*, §6.1.1.2. 130% of the Federal poverty level at the time of this overpayment was \$2927 for a household of 5. See *FSH*, §8.1.1.1, release 12-02, effective October 1, 2012. The income of all people in the FoodShare group must be reported. *FSH*, §4.3.1. Income of high school students ages 17 and younger is excluded but at age 18 it is counted. See *FSH*, §4.3.2.2 at # 3. Thus Petitioner's income had to be reported.

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). If, however, it was agency error, the recovery is limited to 12 months prior to the discovery of the error. *FoodShare Wisconsin Handbook (FSH)*, §6.1.1.2. As this overpayment began less than 12 months prior to discovery it makes no difference whose error caused the overpayment.

Further, all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. *FSH*, §7.3.1.2.

This hearing was held at the same time as a hearing for Petitioner's mother on the same issue as presented here. (DHA # 154720.) She really represented herself and Petitioner in the hearing and was concerned about the repayment of this FoodShare overissuance. She does not believe it is fair for her son to have to repay an overissuance as he was unaware of total household income and FoodShare rules. Further, she believes the agency is at fault as she was not adequately informed of the need to report. As noted above, however, fault is not an issue here.

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 public benefits including FoodShare. 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. However, I note the following policy regarding recovery of FoodShare overissuance via tax intercept:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.1.2.

In conclusion, the above makes apparent that Petitioner's income had to be reported but was not thus creating this overpayment. Further, the State is to collect that overissuance including via the tax intercept.

CONCLUSIONS OF LAW

That the FoodShare program is required by law to report Petitioner's unpaid FoodShare overissuance to the Department of Revenue for recovery.

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

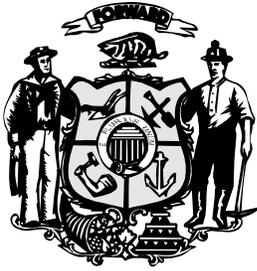
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 11th day of March, 2014

\sDavid D. Fleming
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 March 11, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit