



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155411

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on March 06, 2014. The record was held open to permit the respondent to obtain further information; said information was promptly received.

The issue for determination is whether the agency properly issued a notice of state tax intercept to the Petitioner.

There appeared at that time 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: Tom Miller

La Crosse County Department of Human Services
300 N. [REDACTED]
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. The respondent established an FS overpayment claim against the petitioner and NN, the mother of his minor children, based upon its finding that NN had failed to report that petitioner resided with her.
3. Respondent sent a Repayment Agreement for FoodShare Overpayment to petitioner at [REDACTED] [REDACTED], La Crosse, WI 54601-3228. This is the La Crosse County offices address; petitioner has never resided there.
4. Dunning notices were also mailed in April, May, and June of 2013, and addressed to petitioner at the [REDACTED] address in La Crosse.
5. On July 12, 2013, a tax intercept notice was sent to petitioner at the [REDACTED] address in La Crosse.

DISCUSSION

Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, Food Stamps, AFDC and/or Medical Assistance payments previously made incorrectly.

The Department of Children and Families – Public Assistance Collections Unit must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from 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 State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices. FoodShare Handbook § 7.3.2.10.

A person 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 person has received three dunning notices, s/he is subject to both tax intercept and monthly repayment. FoodShare Handbook § 7.3.2.12.

In this case, the Petitioner did not appeal the underlying FS overissuance. He claims that he was never informed of this, and the Respondent did not present any FS overpayment notice that bears Petitioner's correct address. The Respondent submitted an Investigative Report that was prepared by the Respondent's investigator with regard to allegations that Petitioner was residing with his children and their mother. The report was dated January 16, 2013, which pre-dates the FS overpayment determination and all subsequent notices pertaining thereto. See, Exhibit 2. The Report provides the following information:

From about August 2009 to about September 2010, [Petitioner and NN] lived at [REDACTED] [REDACTED] in La Crosse. ... From about September 2010 to about July 2012, [they] lived at [REDACTED], [REDACTED], [REDACTED]. ... In about July 2012, [they] moved into the home at [REDACTED] in [REDACTED]. They continue living there today.

Despite having this information available, the Respondent continued to, in effect, mail the Petitioner's overpayment notices, dunning notices, and tax intercept notice back to itself. The Respondent was unable to provide any information as to why the La Crosse County office address was used for the Petitioner. In

any event, because the Petitioner did not receive the three dunning notices, the respondent did not properly issue a tax intercept notice to the Petitioner. See, FoodShare Handbook § 7.3.2.10.

CONCLUSIONS OF LAW

The respondent did not properly issue a tax intercept notice to the Petitioner.

THEREFORE, it is

ORDERED

That the respondent shall take all administrative steps necessary to rescind the tax intercept notice issued to the Petitioner on July 12, 2013, and shall cease any action to intercept Petitioner's taxes related to the July 12, 2013, notice. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of April, 2014

\sPeter McCombs
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 April 18, 2014.

La Crosse County Department of Human Services
Public Assistance Collection Unit