



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155413

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on March 24, 2014, at Madison, Wisconsin.

The issue for determination is whether the appeal of the tax intercept was timely filed.

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: Kris DeBlair

Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. Petitioner previously lived with his mother and was an adult on his mother's FS case.
2. On 7/1/13 the Department sent a two FS Overissuance Notices for the amounts of \$6,312 and \$1,578 to petitioner at [REDACTED], WI. That address is petitioner's mother's home.

3. A Repayment Agreement was mailed to the same [REDACTED] [REDACTED] address on 7/2/13.
4. Dunning notices were sent to [REDACTED] [REDACTED] on 8/2/13, 9/4/13, and 10/2/13.
5. On 11/15/13 the Department sent a tax intercept notice to petitioner at [REDACTED] in [REDACTED], WI.
6. On 12/20/13 the Department sent US Treasury Collection notice to [REDACTED] in [REDACTED], WI.
7. Petitioner received this notices. None of the mailed notices were returned to sender. Petitioner did not act on the various notices despite the explanations of appeal rights and deadlines within the various documents.
8. Petitioner's mother has been paying part of the overissuance as the Department has also pursued recoupment through her.
9. Petitioner filed a request for hearing on February 11, 2014.

DISCUSSION

Wis. Stat. § 49.85, provides that the Department shall, at east annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayments of public assistance, including Food Stamps (FS). See also, Wis. Stat. § 49.125; Wis. Stat. § 49.195(3); and, 7 U.S.C. § 2022.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Wisconsin Department of Revenue for setoff from his/her state income tax refund, and must inform the person that s/he may appeal the decision by requesting a hearing. Wis. Stat. § 49.85 (4).

Wis. Stat. § 49.85(3)(b) provides that the DWD must give the person whose tax refund is to be intercepted at least 30 days written notice of the impending intercept by sending the required certification notice to his or her last known address. Wis. Stat. § 49.85(3)(b)(2) also requires that the notice issued inform the person subject to the intercept that he or she has *30 days from the date of the notice to appeal the certification action*. Wis. Stat. § 49.85(4)(b), provides for an appeal contesting the certification under Wis. Stat. § 227.44.

Petitioner concedes that he did not file an appeal of the underlying overissuance claim. Petitioner explains that he did not think he had done anything wrong or illegal. He further explained that he gave the various notices to his mother's social worker rather than follow the instructions for proper appeal. Petitioner would have been better served by reading the notices and following the instructions on the notices for a person to follow if they wish to dispute the claim. This lapse was petitioner's responsibility.

Petitioner was properly informed of the overissuance. He did not file a proper timely appeal with DHA as the notice explains a person must do. Petitioner received the tax intercept notice and did not file a proper appeal to DHA within 30 days of the notice as the notice explains a person must do.

As for the collection notice, the notice provides for a dispute process by mailing additional information to the Public Assistance Collection Unit. That is not a matter over which DHA has jurisdiction and the notice does not suggest that DHA has any role in that process. I do not address it here.

CONCLUSIONS OF LAW

The appeal of the tax intercept notice was untimely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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 29th day of April, 2014

\sJohn P. Tedesco
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 29, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit