



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/155420

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 10, 2014, under Wis. Stat. §49.85(4), and Wis. Admin. Code §§HA 3.03(1) and (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on May 08, 2014.

The issue for determination is whether the agency correctly seeks to intercept petitioner's tax refund to collect an overpayment of FS.

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: Pang Thao Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County who was an adult over 18 in her household that received FS from May 1, 2012 – April 30, 2013.
2. On August 5, 2013 the Milwaukee Enrollment Services (agency) sent petitioner a notice informing her that her household had received an overpayment of FS in the amount of \$3869 (claim # [REDACTED]). Petitioner did not appeal that notice.
3. On September 4, 2013 the agency sent petitioner a Repayment Agreement for the FS overpayment.
4. On October 2, 2013 the agency sent petitioner a dunning notice for the FS overpayment.
5. On November 4, 2013 the agency sent petitioner another dunning notice for the FS overpayment.
6. On December 3, 2013 the agency sent petitioner another dunning notice for the FS overpayment.
7. On January 17, 2014, the agency sent petitioner a notice informing her that it intended to intercept her state tax refund to recover the FS overpayment claim.

### DISCUSSION

Wis. Stat. §49.85, provides that the agency 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 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 overpayments. She did not file a hearing request to challenge the overpayments within the 90 day period as advised in the notice of August 5, 2013. The petitioner does not get another opportunity to argue the validity of the overpayment decision here.

The determinations by the agency that the Petitioner was overpaid must be affirmed. I add that federal law requires *all* FS overpayments be recovered, regardless of whether the recipient or the agency is at fault. Those regulations provide, in relevant part, as follows:

(a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR §273.18. The FS Handbook similarly provides that an adult person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook §7.3.1.2.

I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

The petitioner may want to contact the Public Assistance Collection Unit to see if a repayment agreement could be reached to avoid the tax intercept. Further, if she receives FS, the overpayment may be repaid through a recouplement of current benefits.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid \$3869 (claim # [REDACTED]) in FS.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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).

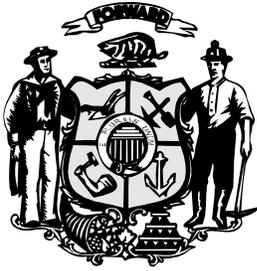
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 9th day of May, 2014

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\sKelly Cochrane  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 9, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit