



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155518

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Monroe County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 17, 2014, at Sparta, Wisconsin.

The issue for determination is whether the Department erred in its issuance of the tax intercept notice with regard to the FS overissuance.

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: Tim Miller

Monroe County Department of Human Services
Community Services Bldg.
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was previously a resident of [REDACTED], WI.
2. Petitioner received FS as case head of a group of 3 including herself and her two children.

3. The Department conducted an investigation and determined that petitioner was not actually living with her two children.
4. On 10/22/12, the Department sent notice to petitioner informing her of an overissuance of FS of \$3,124 for the period from 9/1/11 to 6/30/12, and another overissuance of \$1,304 for the period from 7/1/12 to 10/31/12.
5. Petitioner did not appeal the overissuance determinations.
6. Both notices were sent to [REDACTED] in [REDACTED], WI. This was petitioner's correct mailing address until later in November 2012.
7. On 11/2/12, the Department sent repayment agreements to petitioner at the [REDACTED] address.
8. In November 2012, petitioner moved to Arizona.
9. On November 18, 2012, the Department updated petitioner's mailing address with an address in [REDACTED], WI based on an online Access system update.
10. The Department sent Dunning notices to petitioner at the [REDACTED] address on 12/4/12, 1/3/13, and 2/4/13. These notices were all sent to an address in [REDACTED], WI.
11. On March 15, 2013, petitioner was sent a tax intercept notice to the [REDACTED], WI address.
12. Petitioner did not respond.
13. Petitioner filed an appeal on February 14, 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.

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 of workforce development shall hold a contested case hearing under s.227.44, except that the department of workforce development 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.

Wis. Stat. § 49.85(4)(b).

First, I am not considering the underlying overissuance claims or the merits of those claims. The overissuance notices were sent to the correct address in [REDACTED] at the time they were sent. Petitioner did not

appeal from them. Petitioner claims they were not received. Where it is demonstrated by the evidence that the notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin caselaw.

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, Nack v. State, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, Evidence2d. ed.) § 2153; 1 Wigmore, Evidence (2nd ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

***(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2nd 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 ((1994).

In this case, the overissuance notices were sent to the proper address. Petitioner's statement that she did not receive them does not overcome the presumption of delivery and receipt.

But, the tax intercept notice was sent to [REDACTED], WI which petitioner denies was ever her address. The agency did not establish that it was ever petitioner's correct address. The state income tax refund intercept statute requires mailing of the state income tax refund interception notification to the last known-address of the former benefits recipient, and no more. The testimony of the county agency representative is that the address used was the last-known address on record at the time of the interception notification. But, it certainly appears that petitioner was in Arizona at the time and there has been no connection of the [REDACTED] address to her. I must find that she never received the tax intercept notice.

CONCLUSIONS OF LAW

1. Any challenge to the underlying FS overissuances is untimely.
2. The tax intercept was issued in error because the petitioner never received the tax intercept notice.

NOW, THEREFORE, it is ORDERED

That this matter is remanded to the Department and its county agent with instructions to rescind and reverse the tax intercept and refund to petitioner any state tax refunds already recouped through such method. The Department may issue new tax intercept notice properly to petitioner. These actions shall be completed within 10 days 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 11th 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 11, 2014.

Monroe County Department of Human Services
Public Assistance Collection Unit