



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/155519

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 14, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Monroe County Department of Human Services in regard to Medical Assistance, a hearing was held on March 17, 2014, at Sparta, Wisconsin.

The issue for determination is whether the Department properly issued a tax intercept for the MA overpayments represented by claim numbers [REDACTED] and [REDACTED].

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: Tom 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 11/02/12, the Department sent notice to petitioner informing her of an overpayment of MA in the total amount of \$7,720.07 for the period from 9/1/11 to 10/31/12. The notice was sent to [REDACTED] in [REDACTED], WI. This was petitioner's correct mailing address until later in November 2012.
5. In November 2012, petitioner moved to Arizona.
6. On November 18, 2012, the Department updated petitioner's mailing address with an address in [REDACTED], WI based on an online Access system update.
7. 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.

In this case, the agency failed to provide a copy of the tax intercept as an exhibit. Petitioner claims that she never received it. I note that in a parallel FoodShare tax intercept case (FTI/155518), I found that the FS tax intercept notice that was sent to petitioner was sent to an address that the Department did not establish as the correct mailing address for petitioner. The Department did not establish proper delivery or receipt in that matter. In this case, we do not even have a copy of the notice, if in fact one was issued. I cannot find that notice was properly given of the tax intercept.

### CONCLUSIONS OF LAW

The Department failed to establish that a tax intercept notice was properly sent, delivered, or received.

**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

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\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  
Division of Health Care Access and Accountability