



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/156246

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Fond Du Lac County Department of Social Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on April 24, 2014.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following 2 FS overpayment Claims in the total outstanding amount of \$417.00 covering the time period October 26, 2011 to September 30, 2013:

Claim # [REDACTED] October 1, 2012 to September 30, 2013; original amount \$192.00; outstanding balance \$128.00; and,

Claim # [REDACTED]; October 26, 2011 to September 30, 2012; amount \$289.00.

There appeared at that time via telephone 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: Deborah Bohlman, ESS
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County, Wisconsin.
2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following 2 FS overpayment Claims in the total outstanding amount of \$417.00 covering the time period October 26, 2011 to September 30, 2013:
 Claim # [REDACTED] October 1, 2012 to September 30, 2013; original amount \$192.00; outstanding balance \$128.00; and,
 Claim # [REDACTED]; October 26, 2011 to September 30, 2012; amount \$289.00.

Exhibit #8.

3. Petitioner received 2 written FS overpayment notices entitled *Notification of FS Overissuance* each dated October 31, 2013 (one for each of the overpayment Claims listed in *Finding of Fact #2*, above); the FS overpayment notices each explained the overpayment and how petitioner could file an appeal, including the 90-day time limit for filing an appeal. Exhibit #2.
4. Petitioner received a written FS overpayment notice entitled *Notice of Foodshare Overissuance* dated October 30, 2013 for the overpayment Claims listed in *Finding of Fact #2*, above; the FS overpayment notice explained the overpayments and how petitioner could file an appeal, including the 90-day time limit for filing an appeal. Exhibit #1.
5. Petitioner never requested a Hearing in response to the October 31, 2014 and October 30, 2014 FS overpayment notices.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2011-12).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2011-12).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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) (2011-12).

Two *Notification of FS Overissuance* notices dated October 31, 2013 were sent to petitioner and were received by petitioner. Additionally, a *Notice of Foodshare Overissuance* notice dated October 30, 2013 was sent to petitioner and was received by petitioner. All those notices explained how petitioner could file an appeal, including the time limit for filing an appeal. Thus, petitioner had a prior opportunity to contest the overpayments listed in *Finding of Fact #2*, above. It follows that petitioner may not now contest the merits of the FS overpayments.

Petitioner testified that she did not request a Hearing in response to the notice because she thought that she was wrong. This is unfortunate -- but does not change the fact that petitioner had a prior opportunity to contest the overpayments.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the FS overpayment claims identified in *Finding of Fact #2*, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$417.00 and that amount may be applied against the FS overpayment claims identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That DHS may certify the amount of \$417.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2011-12), for purpose of a tax intercept of petitioner to repay the FS overpayment claims identified in *Finding of Fact #2*, above.

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 30th day of April, 2014

\sSean P. Maloney
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 30, 2014.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit