



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/156567

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 04, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Sawyer County Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on May 05, 2014.

The issue for determination are (1) whether the petitioner is liable for an overpayment of FoodShare benefits and (2) whether Department correctly intercepted her tax refund to collect that overpayment.

There appeared at that time 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: Irene Lehman

Sawyer County Human Services  
10610 Main Street  
PO Box 730  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Petitioner and her father moved to the home of her father's girlfriend, DG, after her father's diagnosis of cancer. DG reported this to respondent, and that petitioner and her father were eating separately. The respondent correctly excluded petitioner's father from DG's case, but incorrectly added petitioner to the case.
3. The respondent alleged an overpayment of FS benefits to DG's household during the period of July 1, 2011 through February 29, 2012, in the amount of \$1,272.00. DG appealed the overpayment on the basis that it was not caused by her fault, but the overpayment was upheld. Exhibit 3.
4. Petitioner turned 18 years old in November, 2010, prior to commencement of the overpayment period. She resided with DG until October, 2011.
5. By notice dated August 2, 2012, the agency informed petitioner that she was liable for an FS overpayment totaling \$1,272.00 from July 1, 2011 through February 29, 2012. Exhibit 5. Although petitioner was not the case head of the FS household, she was an adult included the household.
6. The agency then sent three "dunning" notices to petitioner with no response. Exhibit 5, pp. 4, 5, and 6.
7. On March 15, 2013, the PACU sent petitioner a notice telling her that it intended to intercept her state tax refunds to recover the overpayment.

### DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, and Medical Assistance payments made incorrectly.

The Department of Health Services 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner filed this appeal to argue that it is unfair that the agency is recovering from her because she did not even realize that she was included in her father's girlfriend's FS household. She testified that financially she is not able to repay the overpayment (her father's girlfriend also is liable for the outstanding overpayment amount).

The problem is that petitioner did not appeal within 90 days of either the August 2, 2012, notice or the March 15, 2013, notice of tax intercept. Petitioner conceded in her written Request for Hearing that she had received notice; she wrote that, at that time, DG informed her to disregard the paperwork because she was taking care of everything. Unfortunately, that does not constitute good cause sufficient to restore jurisdiction here. State law provides that the Division of Hearings and Appeals has no jurisdiction to hear untimely matters. Petitioner had notice of the overpayment, but did not timely appeal. Furthermore, there is nothing in the law that allows the Division of Hearings and Appeals to prevent the imposition of the tax intercept due to financial hardship. Petitioner is advised to pursue this matter further with DG, and to contact the Public Assistance Collection Unit to discuss repayment options.

### CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals cannot hear the merits of an overpayment claim following notice of a tax intercept when the person did not appeal the original overpayment notice timely.
2. The PACU may utilize a tax intercept to recover the claim in this case.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 13th day of June, 2014.

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\sPeter McCombs  
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 June 13, 2014.

Sawyer County Human Services  
Public Assistance Collection Unit