



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/157181

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to collection of allegedly overpaid FoodShare benefits (FS), a hearing was held on May 21, 2014, by telephone.

The issue for determination is whether the Department of Health Services correctly sought interception of the petitioner's state income tax refund to collect an overpayment of FoodShare benefits

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: Kristine DeBlare, PARIS agent, and
Sandra Waugus, fraud investigator-Marinette Co.
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. The petitioner had an open FS case in [REDACTED] in the spring of 2013. By May 15, 2013, he had arrived in Wisconsin, and he filed an FS application in Wisconsin on that date. He advised that

he was unable to obtain written verification that his [REDACTED] case had closed. The petitioner then continued to receive FS from Wisconsin until at least October 31, 2013. He used his Wisconsin FS benefits in 2013.

3. The petitioner's [REDACTED] FS case was not closed from June through October 2013, and [REDACTED] continued to put FS allotments on the petitioner's [REDACTED] FS card. The petitioner did not use his [REDACTED] allotments after June 6, 2013. He has lost his [REDACTED] card, and the [REDACTED] account has an unused balance of \$948.85. [REDACTED] does not have a mechanism for a recipient to voluntarily return his benefits.
4. On October 28, 2013, the county agency issued a *Notification of FS Overissuance* (claim # [REDACTED]) to the petitioner, at his last known mailing address of [REDACTED]. See, Exhibit 1A. The agency determined that there had been an overpayment to the petitioner of \$879.00 for the June through October, 2013 period. The agency issued a FS Repayment Agreement to the petitioner on November 4, 2013, followed by three dunning letters. However, the Repayment Agreement and dunning letters did not advise the petitioner of any appeal rights. See Exhibits 1B, 1C, 1E, 1F. The petitioner did not request a fair hearing to contest the property of the overpayment determination. He left Wisconsin for the 2013-2014 winter, so he did not receive the Repayment Agreement or dunning letters. He opened his *Notification* in the presence of a Wisconsin county worker in April 2014.
5. On April 11, 2014, the Department issued a state tax refund interception notice to the petitioner. (The letterhead on the refund interception notice is that of the Department of Children and Families because the Department has a Memorandum of Understanding in place with DCF that allows it to issue tax refund interception notices on the Department's behalf). The notice advised that the Department intended to retain up to \$863.00 from the petitioner's state income tax refund to satisfy claim # [REDACTED]. See, Exhibit 2. The petitioner timely appealed from that interception notice.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits: "...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....," Wis. Stat. § 49.125(1); see also 7 C.F.R. § 273.18(a) .

The Department may utilize tax refund interception as a means of recovering the overpayment. Wis. Stat. § 49.85. Section 49.85 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 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 Department has issued the required refund interception notice here.

I. JURISDICTION TO REVIEW THE MERITS OF THE UNDERLYING OVERPAYMENT DETERMINATION.

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 of health services 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 *not* had a prior opportunity for hearing on the merits of the overpayment. He did not file a hearing request to challenge that October 2013 overpayment notice within the 90 day appeal period. However, his failure to so file is understandable, because he was out of state over the winter. On the other hand, the petitioner should have taken steps to have his important mail forwarded to him; the agency is not a mind-reader as to addresses. Although not required to do so, I will give the petitioner the benefit of the doubt and allow him an opportunity to argue the validity of the overpayment decision here.

II. LIABILITY FOR THE FS OVERPAYMENT THAT OCCURRED FROM JUNE THROUGH OCTOBER, 2013.

The petitioner represented to the Wisconsin county agency that his ██████ FS case was closed, when it was not closed, in May 2013. He is clearly liable for repayment of the FS received from Wisconsin for June 2013 (\$200).

A recipient may not collect FS from two states/“project areas” at the same time. The federal rule at 7 C.F.R. § 273.3(a) declares:

§273.3 Residency.

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in §271.2 of this chapter) or office within the State. *No individual may participate* as a member of more than one household or *in more than one project area*, in any month, unless an individual is a resident of a shelter for battered women and children as defined in §271.2 ...

[emphasis added]

Because the petitioner collected from two states simultaneously, he was overpaid. A collection effort must be made against an adult who was overpaid:

Sec. 273.18 Claims against households.

- (a) *General.* (1) A recipient claim is an amount owed because of:
- (i) Benefits that are overpaid or...
 - ...
 - (4) The following are responsible for paying a claim:
 - (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
 - (ii) A sponsor of an alien household member if the sponsor is at fault; or
 - (iii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

7 C.F.R. §273.18(a)(1),(4).

The petitioner has documented that he did not use his duplicate ██████ benefits after June 6, 2013. One way to remedy this problem would have been for the petitioner to return his unused benefits to ██████. Unfortunately, ██████ has no mechanism for voluntary return of benefits. Another possible solution might be for the petitioner to obtain a new ██████ FS card and use up his ██████ balance, while paying

back his Wisconsin overpayment via a Repayment Agreement. However, I can find no mechanism for throwing out his Wisconsin overpayment or removing the interception order.

CONCLUSIONS OF LAW

1. Jurisdiction is present to consider the merits of the underlying overpayment determination against the petitioner, as he did not timely receive the *Notification of FS Overissuance*.
2. The petitioner was overpaid FS from June through October 2013, due to issuance of duplicate benefits by ██████ and Wisconsin.
3. The Department correctly pursued a tax refund interception action here.

NOW, THEREFORE, it is ORDERED

That the petition is 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 23rd day of June, 2014

\sNancy J. Gagnon
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 24, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit