



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/157324

PRELIMINARY RECITALS

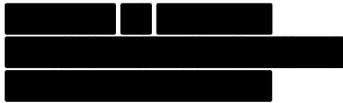
Pursuant to a petition filed April 29, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner's income tax refund to recover a FoodShare (FS) overpayment, a telephone hearing was held on May 28, 2014, at Milwaukee, Wisconsin. At the request of the agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an FS overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, IM Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. By two notices dated April 9, 2013, the agency informed petitioner that she was liable for an FS overpayment totaling \$10,214 from August 10, 2011 through December 31, 2012, claim Nos. [redacted] and [redacted]. The petitioner admits that she received these Notices.
2. The petitioner did not appeal the overpay notice in 2013.
3. The agency then sent three "dunning" notices to petitioner in the first three months of 2014, with no response.

4. In the intervening months since April 9, 2013, the agency recouped \$400 from the petitioner's then ongoing FS allotments; she no longer is a FS recipient.
5. On April 11, 2014, the PACU sent petitioner a notice telling her that it intended to intercept her state tax refunds to recover the overpayment in a balance due of \$9.814. The petitioner received this notice.

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 overpaid and was moving about between Milwaukee, Tomahawk and Rhinelander for unspecified periods of time in the tested periods. Second, she testified that financially she is not able to help repay the overpayment. Third, she argues that the biological father was not living with her in the test periods. She could not provide any information on where he did live. Fourth, she asserted that while she received the overpayment notices, she did not understand and did not take responsibility when she got them to find out what they were about. Fifth, she asserts she did report residence changes when the occurred.

The problem is that petitioner got the Notices of the overpayments and did not appeal within 90 days of the April 9, 2013 overpayment notices. I find her testimony that she did not know what they meant to be vague, self-serving, uncorroborated in any way, undercut by her statement that she "didn't take responsibility" when she got them, and not credible. She got the Notices and failed to appeal until a year later when she received the state income tax refund intercept notice. That is simply too late. She has "sat" upon her rights and consequently, lost them. State law provides that the Division of Hearings and Appeals now cannot hear the issue of who is liable for the claim as the appeal as it concerns the underlying

overpayment is not timely filed. No exception applies here. The Department correctly certified the claims for tax intercept, after reducing the balance due by the \$400 recouped directly from FS in the past year. 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 would have to contact the PACU to discuss repayment options. The state income tax refund certification of a public assistance debt of \$9,814 must be sustained.

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, as here. The petitioner appealed 383 days after the dates of the two Notices of FS Overissuance of April 9, 2013.
2. The PACU may utilize a tax intercept to recover the claim in this case in the amount of the current balance due of \$9,814 for claim Nos. [REDACTED] and [REDACTED].

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 11th day of June, 2014

\sKenneth D. Duren, Assistant Administrator
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 11, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit