



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/157355

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 5, 2014, by telephone. A hearing set for June 4, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the Department of Health Services correctly sought to intercept 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:



Respondent:

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

By: Jan Hinz, ES Spec.
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Fond du Lac County.
2. [redacted] was the head of a FS household in 2013. The petitioner and [redacted] resided together as roommates at [redacted], from April through [redacted]

August 2013. They are not married, have no children in common, and did not purchase or prepare food together. Nonetheless, ██████ listed the petitioner as a member of her FS household in at least the months of April through August 2013. The petitioner did not have an open FS case of his own during those months, as he was employed full-time and believed that he was not eligible for FS.

3. ██████'s incorrect representation to the county agency that the petitioner was in her FS household resulted in excess FS being issued to ██████ from April through August, 2013.
4. On November 14, 2013, the county agency issued a *Notification of FS Overissuance* (claim # ██████) to ██████, and to the petitioner at an address of ██████, ██████. The petitioner has never lived at that address. The agency determined that there had been an overpayment to ██████'s household of \$1,385 for the April through August, 2013 period. The agency issued a FS Repayment Agreement to ██████, followed by several dunning letters. The petitioner did not request a fair hearing to contest the property of the overpayment determination as it pertained to him, because he did not receive the *Notification*.
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 \$1,345.00 from the petitioner's state income tax refund to satisfy claim # ██████. 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 overpayment within the 90 day appeal period. However, his failure to so file is understandable, because he did not receive notification of the FS overpayment. Thus, the petitioner must be given an opportunity to argue the validity of the overpayment decision here.

II. THE PETITIONER IS NOT LIABLE FOR THE FS OVERPAYMENT THAT OCCURRED FROM APRIL THROUGH AUGUST, 2013.

██████ represented to the county agency that the petitioner was in her FS household from April through August, 2013. Although the petitioner resided with her as a roommate, they did not purchase/prepare/share food together. Therefore, although he was an individual living with ██████, he was not a member of her FS household. Therefore, ██████ was overpaid FS for the months in question, because she received FS for a household of two, rather than the correct FS household size of one person.

If the petitioner was not sharing food with the unrelated ██████, he could not be a member of her FS household. The federal definition of a FS household requires that a person be living with and sharing food with the other FS household members to be included in the household:

Sec. 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

- (1) An individual living alone;
- (2) An individual living with others, ***but customarily purchasing food and preparing meals for home consumption separate and apart from others;*** or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements.--(1) Required household combinations.* The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;

(emphasis added)

7 C.F.R. §273.1(a),(b).

See also *FS Wisconsin Handbook (FSWH)* at §§7.3.1.2 and 3.3.1.1 (“food unit”), online at <http://emhandbooks.wi.gov/fsh/>.

The agency seeks to recover the overpayment from either ██████, the petitioner, or both. However, collection efforts against the petitioner are not appropriate. The determination by the county agency that the petitioner was overpaid is reversed.

CONCLUSIONS OF LAW

1. Jurisdiction is present to consider the merits of the underlying overpayment determination against the petitioner, as he did not receive a Notification of FS Overissuance for claim # ██████.
2. The petitioner was not a member of ██████'s FS household from April through August, 2013.

3. The petitioner is not liable for any portion of the FS claim established against ██████ for April through August, 2013.
4. Certification for tax refund interception against the petitioner for claim # ██████ was incorrect, and must be reversed. This conclusion has no effect on the Department's decision that ██████ was overpaid, or any collection efforts that the Department may be making against ██████.

NOW, THEREFORE, it is ORDERED

That the Department shall cease efforts to collect on claim # ██████ from the petitioner (it may still proceed against ██████). This action shall be taken within 10 days of the date of this Decision. If the petitioner has already had his state income tax refund intercepted for this claim, PACU shall take the necessary steps to have the appropriate refund issued to the petitioner within a reasonable period.

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 9th 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 9, 2014.

Sheboygan County Department of Human Services
Public Assistance Collection Unit