



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/157424

PRELIMINARY RECITALS

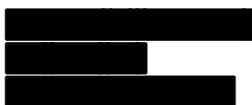
Pursuant to a petition filed May 02, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 03, 2014, at Milwaukee, Wisconsin. The record was held open post-hearing for submission of evidence by the Petitioner. The Petitioner submitted additional evidence on June 25, 2014 and the record was closed.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

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
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of NA. He is 22 years old.

2. Petitioner's mother AC lives at [REDACTED]. She has been the primary person on the household's FS case since at least July, 2010.
3. On December 14, 2012, the agency issued a tax intercept notice to the Petitioner at [REDACTED]. The notice informed him that the agency may intercept an unpaid debt for excess public assistance in the amount of \$1,276. The notice also informed him of the right to a hearing by filing an appeal within 30 days of the date of the notice.
4. On July 11, 2012, the agency issued a Notification of FS Overissuance to the Petitioner at the [REDACTED] address informing him of the agency's intent to recover an overissuance of FS benefits in the amount of \$1,484 for the period of July 1, 2011 – May 31, 2012. The notice informs the Petitioner of the right to a hearing by filing an appeal within 90 days of the date of the notice.
5. On October 18, 2012, the agency issued a Notification of FS Overissuance to the Petitioner at the [REDACTED] address informing him of the agency's intent to recover an overissuance of FS benefits in the amount of \$1,599 for the period of July 1, 2010 to June 30, 2011. The notice informs the Petitioner of the right to a hearing by filing an appeal within 90 days of the date of the notice.
6. On September 5, 2012, October 2, 2012 and November 2, 2012, the agency mailed dunning notices to the Petitioner at the [REDACTED] address. The September and October notices reference the overpayment relating to the period of July 1, 2011 – May 31, 2012. The November notice references both overpayment periods.
7. On February 15, 2013, the agency issued a tax intercept notice to the Petitioner at the [REDACTED] Milwaukee address. The notice informed him that the agency may intercept an unpaid debt for excess public assistance in the amount of \$1,491. The notice also informed him of the right to a hearing by filing an appeal within 30 days of the date of the notice.
8. Petitioner moved from his mother's home on [REDACTED] in September, 2010. He has not lived in Wisconsin since that time.
9. In 2014, Petitioner's tax refund of \$1,852 was intercepted.

DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Further, all adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4).

Once an overpayment is established, Wis. Stat. § 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 overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

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 hearing right is described in Wis. Stat. § 49.85(4)(b) but is limited:

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 time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, Stats.

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g).

The first question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept. The second question is whether Petitioner was living in the home of his mother during the time period involved here and thus liable for this overpayment. The answer to both questions is resolved by determining where Petitioner was living from the time this overpayment began through the issuance of the overpayment notices and the tax intercept notice.

Petitioner testified that he moved from his mother's home in or about 2009 when he was a junior in high school to live with his father on [REDACTED], Milwaukee until he left Wisconsin in September, 2010. He submitted evidence that demonstrates he was a resident student at the [REDACTED] from September, 2010 until August, 2011. He testified that he then moved to [REDACTED] until July, 2012 when he moved to his current residence in [REDACTED]. He submitted tax returns as evidence of his addresses in [REDACTED] and [REDACTED]. He also testified that he knew his mother received FS benefits but she told him he had been removed from her case. He was unaware of the overpayment until his taxes were intercepted this year.

I also note that the agency records show the Petitioner's mother removed him from the case in or about December, 2011.

Obviously Petitioner's mother was claiming that he was part of her household for most of the overpayment periods but the testimony convinces me otherwise. The best evidence indicates that Petitioner had moved from the home of the mother before this overissuance occurred. I am finding his appeal of both the tax intercept as well as the underlying overpayment to be timely as notices were not sent to his address and do not find Petitioner to be liable for the overpayment to his mother because he was not in her household during the time period of this overissuance.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as Petitioner was not living at the address to which the overpayment and tax intercept notices were sent.
2. That Petitioner is not liable for the FoodShare overpayment represented by claim #s [REDACTED] and [REDACTED] because he was not living in the home of his mother during the time period involved.

THEREFORE, it is**ORDERED**

That this matter is remanded to the agency as well as the public assistance collection unit with instructions to take the administrative steps necessary to reverse Petitioner's liability for claim #s [REDACTED] and [REDACTED]. This must be done within 10 days of the date of this decision. Any funds taken from Petitioner to recover the overissuances involved here must be returned to Petitioner. This process must be initiated within 10 days of the decision.

That this decision does not in any way reverse the underlying overpayment as to Petitioner's mother or any other liable party.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of July, 2014

\sDebra Bursinger
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 July 18, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit