



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/157870

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 22, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on June 19, 2014.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following FS overpayment Claim: Claim # [REDACTED]; October 1, 2011 to March 31, 2012; amount \$3,042.00 (corrected from \$3,612.00).

There appeared at that time via telephone 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: Luisa Mcky, ESS/Overpayment Specialist  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**OTHER PERSON PRESENT:**

Megan Thurston, ESS/Overpayment Specialist (observing only)

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County, Wisconsin.
2. During all times relevant to this *Decision* petitioner lived at an address on [REDACTED] in a house that he owns; the County had documents showing this address as petitioner's address (including a utility bill dated February 12, 2012; and paychecks dated August 29, 2012, September 26, 2012).
3. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following FS overpayment Claim: Claim # [REDACTED]; October 1, 2011 to March 31, 2012; amount \$3,042.00 (corrected from \$3,612.00).
4. A written FS overpayment notice entitled *Notification of FS Overissuance*, dated March 14, 2013 and concerning Claim # [REDACTED], was sent to petitioner at an address on [REDACTED]; petitioner never received that notice because he never lived on the address on [REDACTED] to which it was sent.
5. A written notice from State of Wisconsin, dated August 16, 2013 and entitled *Important Notice About Your State Tax Refund and Credits*, concerning Claim # [REDACTED] was sent to petitioner at an address on [REDACTED]; petitioner never received that notice because he never lived on the address on [REDACTED] to which it was sent.
6. Petitioner requested a Hearing by an undated typewritten letter received by the Division of Hearings and Appeals ["DHA"] on May 27, 2014 via U.S. Mail postmarked May 22, 2014.
7. During the time period of the overpayment detailed in *Findings of Fact #3*, above, petitioner, his minor child, and the mother of his minor child all lived together at the house on [REDACTED] that petitioner owns; petitioner was not married to the mother of his child; the mother of petitioner's child was getting FS and petitioner was aware of this (although he states that he was not aware that he was part of the FS household); the mother was the FS case head.
8. The overpayment detailed in *Findings of Fact #3*, above, was caused by agency error (not client error) when the County miscalculated income.

### DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2011-12).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2011-12).

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the County argues that petitioner's request for a Hearing is not timely because it was not made within the allowed 30 days. However, the tax intercept notice that triggers the 30-day time period must be sent to the last-known address of the person from whom DHS intends to intercept taxes. Wis. Stat. § 49.85(a) & (b) (2011-12). This was not done in this case, as reflected in the above *Findings of Fact*. Furthermore, petitioner never received the tax intercept notice. Therefore, the 30-day appeal time period cannot be enforced in this case.

The tax intercept Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."

Wis. Stat. § 49.85(4) (2011-12).

In this a case petitioner never had a prior opportunity for a Hearing. This is because the March 14, 2013 overpayment notice was sent to an incorrect address and petitioner never received it.

Petitioner does not deny that an FS overpayment occurred. However, he argues that the "debt does not belong to me. The debt that I am now paying for was a mistake on the states [sic] part when they overpaid my child's mother in her food stamps. . . . I am unsure why I am responsible for her debt to the state when I was not even aware<sup>1</sup> she was on food stamps and we are not together. . . . I would like to address how I am responsible for some else's debt, we were never married nor are we together . . ."

First, the basic definition of a household for purposes of FS is a group of individuals who live together and customarily purchase food and prepare meals together for home consumption. 7 C.F.R. §§ 273.1(a)(3) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 3.3.1.1. A person under 22 years of age who is living with his or her natural or adoptive parents must be considered as customarily purchasing food and preparing meals together with his or her parents even if he or she does not do so, and thus must be included in the same household as his or her parents. 7 C.F.R. §§ 273.1(b)(1)(ii) (2011); FWH 3.3.1.3.2. Therefore, persons who live together with a minor child they have in common are, by definition, part of the same FS household. 7 C.F.R. § 273.1(b)(1)(ii) (2011); See also, FWH 3.3.1.3.2. Thus, petitioner, his minor child, and the mother of his child were all part of the same FS household during the time period in question.

Second, the law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); FWH 7.3.1.2. Thus, petitioner is, by law, responsible for the FS Claim in this matter.

Third, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2. Therefore, petitioner can be held liable for the FS overpayment and made

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<sup>1</sup> This is not consistent with the testimony given by petitioner at the June 19, 2014 Hearing. At that Hearing he testified that he was aware she was getting FS but did not know he was part of the FS household.

to repay it even though he did not cause the overpayment and he states that he did not know he was part of the FS household.

### CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$3,042.00 and that amount may be applied against the FS overpayment Claim identified in *Finding of Fact #3*, above.

**NOW, THEREFORE, it is**

### ORDERED

That the petition for review herein be and the same is here by DISMISSED, and that DHS may certify the amount of \$3,042.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2011-12), for purpose of a tax intercept of petitioner to repay the FS overpayment Claim identified in *Finding of Fact #3*, above.

### **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 26th day of June, 2014

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\sSean P. Maloney  
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 26, 2014.

Dane County Department of Human Services  
Public Assistance Collection Unit