



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]

DECISION

FTI/158210

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept the petitioner's tax refund to recover a prior FoodShare (FS) overpayment, a hearing was held on July 9, 2014, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Diane Van Asten
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Brown County.
2. Petitioner is 29 years old and was judged to be incompetent in 2003 with a non-related guardian appointed then. Petitioner still resided with her mother, however, and was part of her mother's FS household. In November, 2009, the county notified the household that there was an FS overpayment of \$11,699 during the period August 1, 2007 through August 31, 2009 resulting

from petitioner's mother not reporting income. Notices were sent to petitioner at her mother's address informing her that she was one of the parties liable for repaying the overpayment.

3. On April 16, 2010, the PACU notified petitioner that it would intercept her state tax refund to recover the overpayment. Again the notice was sent to petitioner's mother's house as petitioner was still residing at that address.
4. In 2014 the Department intercepted petitioner's tax refund of \$815 and applied it to the overpayment. Petitioner's guardian then filed this appeal. When the appeal was filed the balance still owing on the claim was \$2,890.78, as payments have been made by petitioner's mother and petitioner's sister, who also was listed as a liable person.

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). An appeal of a tax intercept notice must be filed within 30 days of the notice. Wis. Stat., §49.85(3)(b)2.

Essentially petitioner's guardian requests that I make petitioner non-liable for the recovery of the overpayment because she is mentally incompetent and had no awareness of the circumstances that led to the overpayment. Her income is limited and the tax intercept money is used to help pay for activities that help her maintain her independence as best possible.

The problem is that I can find no authority for the Division of Hearings and Appeals or the PACU to waive petitioner's liability for the recovery. There is nothing in state law or policy, or federal law, that gives an agency discretion to waive recovery due to disability or other unusual circumstances. Numerous notices were sent to petitioner over time, and had anyone acting on petitioner's behalf responded to the

notices and set up even a minimal repayment plan, the tax refund would not have been intercepted. See the FS Handbook, App. 7.3.2.10, which provides that tax intercepts occur only if a person becomes delinquent in repaying. I must conclude, therefore, that the PACU acted within its authority in utilizing a tax intercept against petitioner to recover the overpayment.

CONCLUSIONS OF LAW

Petitioner is a liable party to an FS overpayment that occurred while she was an adult member of the overpaid FS household; there is nothing in federal or state law that would allow the Division of Hearings and Appeals to waive her liability due to her disability or lack of awareness of the circumstances that led to the overpayment.

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 14th day of July, 2014

\sBrian C. Schneider
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 14, 2014.

Brown County Human Services
Public Assistance Collection Unit