FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

AMENDED DECISION
[redacted]
FTI/158218

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on August 14, 2014, at Waukesha, Wisconsin.

A decision was issued in this matter on September 8, 2014. On September 9, 2014, [redacted], a Senior Collection Specialist with the Public Assistance Collections Unit, who did not participate in the August 14, 2014, hearing submitted an e-mail indicating that DHA did not have jurisdiction over the dispute concerning the interception of Petitioner's Federal Tax Return. (The issue of jurisdiction was not raised by the county agency at the hearing.) Ms. [redacted] supplemented the record with a handbook, "Collecting Food Stamp Program Recipient Claims through the Treasury Offset Program (TOP). Petitioner was subsequently provided a copy, via e-mail of the handbook. On September 10, 2014, the Petitioner was notified of the issue by phone and e-mail. In the e-mail to Petitioner, ALJ Ishii asked the Petitioner to respond within 48 hours, by September 12, 2014, if he had a response that he wanted taken into consideration. No response was submitted by the Petitioner.

The issue for determination is whether Waukesha County Health and Human Services correctly instituted a tax intercept.

Note: The record was held open to give the agency an opportunity to supplement the record with a copy of an overpayment notice. On August 14, 2014, the agency submitted a copy of an overpayment notice dated April 29, 2013. It has been marked as Exhibit 15 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Kathy Jones, Benefit Recovery Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.
2. On April 29, 2013, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [redacted], indicating his household was overissued FoodShare benefits in the amount of $3,305.00 for the period of July 1, 2012 to April 20, 2013. (Exhibit 15)
3. The agency sent Petitioner a repayment agreement on May 2, 2013. (Exhibit 7)
4. On July 1, 2013, the Division of Hearings and Appeals issued a decision upholding the subject overpayment, in a hearing held for Petitioner's wife in case FOP-149352. According to that decision, Petitioner's wife did not dispute the fact that an overpayment occurred, she only argued that it was not fair to hold her accountable for an overpayment caused by agency error. (Exhibit 8)
5. On August 2, 2013, the agency sent Petitioner a second repayment agreement. (Exhibit 9)
6. The agency sent the Petitioner dunning notices (reminders about the debt) on September 4, 2013, October 2, 2013 and November 4, 2013. (Exhibit 10)
7. On December 13, 2013, the agency sent the Petitioner a notice of State tax intercept, advising him that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit 12)
8. The county agency had no copy of a notice advising Petitioner that any Federal tax refunds or credits due him would be intercepted. (Testimony of Ms. Jones)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 10, 2014. (Exhibit 1)
10. On August 1, 2014, the Department of Treasury sent the Petitioner a letter indicating that he has been referred to the TOP (Treasury Offset Program) and that $228.63 had been withheld from his federal tax return to satisfy a debt with the public assistance collections unit. (Exhibit 2)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH),* App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal because he does not think he should be held liable for the overpayment underlying the tax intercept, because the children in the household are not his biological children.

The Federal FoodShare regulations define FoodShare household composition as follows:

> *General household definition*. (a) 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.

   7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

Spouses who live together must be included in the same food unit, even if they do not purchase and prepare meals together. *7 C.F.R. §273.1(b)(1); See also FSH §3.3.1.3.*

"All adult or emancipated minor food unit members at the time of 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…The following are responsible for paying a claim…Each person who was an adult member of the household when the overpayment or trafficking occurred…."*FSH §7.3.1.2; see also* 7 CFR §273.11(a)(4)(i)

Based upon the foregoing regulations and policy, the Petitioner is liable for the underlying Foodshare overpayment, because he was an adult member of the food unit, which also included his wife.

With regard to the underlying overpayment, the Petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

   A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

   …. 7 CFR 273.15(g)

Petitioner's June 10, 2014 appeal was filed well beyond 90-days from the date of the April 29, 2013 overpayment notice. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the tax intercept notice was December 13, 2013. As such, Petitioner needed to file his appeal by January 13, 2013. Petitioner did not file his appeal until June 10, 2014. As such, his appeal is untimely and there is no jurisdiction to hear the merits of his appeal of the state tax intercept.

With regard to the Federal Tax Intercept, the Division of Hearings and Appeals has no jurisdiction to address Petitioner's complaint. "Although State Agencies administer the FSP [Food Stamp Program], these benefits are federally funded and claims established are federal debts." Federal Register, vol. 65, No. 130/ Thursday, July 6, 2000, pg. 41753.

7 CFR §273.18 (n)(2)(i) states that a state agency must, "notify the debtor of the impeding referral to TOP [Treasury Offset Program] according to our instructions relating to: …(C)What will be the appropriate time frames and appeal rights; and (d) Any other information that we determine necessary to fulfill all due process and other legal requirements as well as to adequately inform the debtor of the impending action." Under 7 CFR §273.18 (n)(2)(ii), it states that, "You must also follow our instructions regarding procedures connected with responding to inquiries, subsequent reviews and hearings, and any other procedures determined by us as necessary in the debtor notification process"

Looking at the Federal Register,Vol. 65, No. 130/ Thursday, July 6, 2000, pgs. 41773 and 41774, found on-line at: http://www.fns.usda.gov/sites/default/files/070600.pdf , it is apparent that the appeal right, referred to in 7 CFR §273.18 (n)(2)(i) and (ii), is the right to appeal the underlying overpayment determination.

The instructions from the United States Department of Agriculture, Food and Nutrition Service from 2008, indicate on page 8, that debtors are entitled to a review of the intended TOP action and that the review is, "a review of the record and the debtor is not entitled to a face-to-face review."

Thus, if the Petitioner wishes to contest the interception of his Federal Tax Return, he must contact the State Agency, presumably the Public Collections Unit, and request a review. If he does not find that satisfactory, Petitioner's only recourse is to file a court action. He might wish to contact Legal Action of Wisconsin ([redacted]; toll free [redacted]), if that is the avenue he wishes to pursue.

CONCLUSIONS OF LAW

1. Petitioner is jointly and severally liable for any FoodShare overpayment to his household/food unit.
2. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
3. Petitioner's appeal of the State Tax Intercept is untimely.
4. The Division of Hearings and Appeals does not have jurisdiction to determine whether the Department of Health Services took the appropriate steps to certify the Petitioner to the TOP program for interception of his Federal Tax Refund.

THEREFORE, it is **ORDERED**

That the petition is dismissed in its entirety.

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 15th day of September, 2014.

\sMayumi M. Ishii
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 September 15, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit