



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/158270

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Oconto County Department of Health And Human Servi in regard to FoodShare benefits (FS), a hearing was held on July 16, 2014, at Oconto, Wisconsin.

The issue for determination is

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: Sandy Vandemark

Oconto County Department of Health And Human Servi
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Oconto County.
2. On February 14, 2014 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [redacted], asserting a \$2265.00 overpayment from May 18, 2011 through December 31, 2012. (Exhibit 4).

3. On February 14, 2014 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$3361.00 overpayment from January 1, 2012 through December 31, 2012. (Exhibit 5).
4. On February 14, 2014 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$1046.00 overpayment from January 1, 2013 through June 30, 2013. (Exhibit 6).
5. On February 13, 2014 the agency sent Petitioner a repayment agreement for claim numbers [REDACTED], [REDACTED], and [REDACTED]. (Exhibit 7).
6. On March 4, 2014 the agency sent Petitioner a dunning notice reminding her about the three overpayments in claim numbers [REDACTED], [REDACTED], and [REDACTED] that she needed to repay. (Exhibit 8).
7. On April 2, 2014 the agency sent Petitioner a second dunning notice. (Exhibit 9).
8. On May 2, 2014 the agency sent Petitioner a third dunning notice. (Exhibit 10).
9. On June 13, 2014 the agency sent Petitioner a notice, indicating that it may intercept any tax refund to which she might be entitled to satisfy the \$6,672.00 balance for the overpayments of FoodShare benefits in claim numbers [REDACTED], [REDACTED], and [REDACTED]. (Exhibit 11).
10. On June 13, 2014, Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals over the phone. (Exhibit 1).
11. At the hearing regarding the tax intercept, Petitioners sought to challenge the underlying overpayment. (Petitioners' testimony at hearing). Petitioner, [REDACTED], provided an e-mail sent to her father [REDACTED] on March 5, 2014 with the text of the e-mail addressed to the Division of Hearings and Appeals challenging the underlying overpayments.
12. The Division of Hearings and Appeals did not receive an appeal from Petitioners on March 5, 2014 nor at any other time challenging the underlying overpayments.
13. Following the hearing the agency submitted documents supporting the underlying overpayment. These documents showed discrepancies between [REDACTED] wages reported to the State of Wisconsin by his employer and Petitioners' report of [REDACTED] wages to the agency. (Exhibit 19 part 3). *Id.*

DISCUSSION

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)*.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

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 FS, overpayment of AFDC 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).

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 ... **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

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 notice was June 13, 2014, and Division of Hearings and Appeals received the petitioner's request for fair hearing on that same date. Therefore, Petitioner's appeal of the tax intercept is timely.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

In this case Petitioners sought to challenge the underlying overpayment. Thus the first issue is whether Petitioners' appeal of the overpayments is timely.

Petitioner, [REDACTED], stated that she sent an appeal to the Division of Hearings and Appeals on March 5, 2014. She provided an e-mail sent to her father, but the text of the e-mail was addressed to the Division of Hearings and Appeals, and challenged the underlying overpayments. A review of the Division of Hearings and Appeals (DHA) records showed that DHA never received a request for fair hearing or appeal from Petitioners on or around March 5, 2013.

There are many possible explanations for why the Division of Hearings and Appeals did not receive this request. Petitioner could have e-mailed her father who convinced her not to appeal the underlying overpayments. She could have accidentally sent the notice only to her father and not to the Division of

Hearings and Appeals. She could have sent her father this e-mail, and then decided on her own that she was not going to appeal.

It is important to note that Petitioners' request for fair hearing on the tax intercept was received by the Division of Hearings and Appeals over the phone on the exact date the agency sent Petitioner a notice. This is very different than an e-mail sent to Petitioner, [REDACTED], father with text addressed to the Division of Hearings and Appeals sent nearly three weeks after the agency sent the notice of overissuance. Regardless of the reason Petitioner ultimately did not send a request or appeal on the underlying overpayments to Division of Hearings and Appeals, and therefore Petitioners' appeal of the underlying overpayments is untimely.

Had this appeal been timely, Petitioner would likely not have prevailed. Petitioners believe that they correctly reported their income during the overpayment period. Following the hearing, the agency submitted documents that showed discrepancies between [REDACTED], wages reported to the State of Wisconsin by his employer and Petitioners' report of [REDACTED] wages to the agency. (Exhibit 19 part 3). The overpayment period alleged for all three overpayments is from May 18, 2011 through June 30, 2013. The wage details provided from the State of Wisconsin show [REDACTED] wages from July 2011 through March 2012 to be \$24,602. Petitioners reported wages to the agency during that time period of \$18,858.20. This is a difference of \$5,743.80. This is just one example from that time period. However, it appears from the documents submitted by both the agency and Petitioners that there would have been an overpayment during the time period the agency alleges as the income reported by Petitioners was different than the income reported by Petitioners' employer to the State.

The final issue is the tax intercept. Although Petitioners disputed the underlying overpayments, Petitioners did not dispute that the use of tax intercept was proper. Three or more dunning notices were sent to Petitioners. Petitioners did not dispute receiving these notices. The debt was valid and legally enforceable, the debt was over both the State and federal threshold amount for a tax intercept, the debt is within State and Federal time limits for collecting, is free from any appeal, and the Petitioner has not filed for bankruptcy.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

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

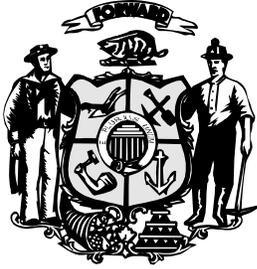
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 31st day of July, 2014

\sCorinne Balter
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 31, 2014.

Oconto County Department of Health And Human Services
Public Assistance Collection Unit