



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/158953

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2014, under Wis. Stat., §49.85(4), and Wis. Admin. Code, §§HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a FoodShare (FS) overpayment, a hearing was held on September 10, 2014, by telephone. A hearing set for August 13, 2014 was rescheduled at the petitioner’s request.

The issue for determination is whether petitioner’s appeal is timely.

PARTIES IN INTEREST:

Petitioner:



;

Respondent:

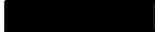
Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Thomas Miller
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Monroe County.
2. On September 4, 2013, the agency notified petitioner and the father of petitioner’s children that they were overpaid \$1,551 in FS from May 30 through August 31, 2013 because the father opened a separate FS case for himself and a child, claim no. . Prior to May 30 the couple received FS together but the case closed due to petitioner’s income. No appeal of the overpayment claim was filed.

3. Three dunning notices were sent to petitioner with no response.
4. On February 14, 2014, the PACU sent petitioner a notice informing her that it intended to intercept her state tax refund to recover the overpayment. The notice informed petitioner that she could appeal within 30 days. Petitioner filed this appeal on July 11, 2014.

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).

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)(a)2.

Because no appeal was filed within 90 days of the original notice, and because petitioner did not appeal within 30 days of the tax intercept notice, the Division of Hearings and Appeals does not have authority to address the merits of the claim. Petitioner testified that she did not receive the FS, that the father opened them without her knowledge. That position could have been stated in a timely appeal, but because petitioner did not appeal timely I cannot address the issue now.

Petitioner acknowledged receiving the notices but stated that she did not appeal because of a number of stress factors. There is no good cause waiver of the appeal limits, however.

CONCLUSIONS OF LAW

Petitioner's appeal of a PACU tax intercept was filed untimely.

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 12th day of September, 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 September 12, 2014.

Monroe County Department of Human Services
Public Assistance Collection Unit