



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FTI/158967

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the St. Croix County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 19, 2014, at New Richmond, Wisconsin. The matter was dismissed on November 20, 2014, because the petitioner failed to appear for a hearing. Her request for a rehearing dated December 4, 2014, was granted on December 9, 2014.

The issue for determination is whether the Department may intercept the petitioner's income tax return to recover an overpayment of FoodShare that occurred because she moved out of the household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: Cheryl Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) lives in Minnesota. She previously lived in Wisconsin.

2. The county agency seeks to intercept the petitioner's tax refund to recover an overpayment of FoodShare to a household she used to live in that occurred from January through November 2011.
3. The sole basis of the overpayment claim is that the petitioner no longer was a part of the household receiving FoodShare benefits.

DISCUSSION

The amount of FoodShare a household receives depends upon its size and net income. State FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). One of the ways the agency may recover an overpayment is by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85.

The county agency seeks to intercept the petitioner's tax refund to recover an overpayment of FoodShare that occurred from January through November 2011 because she moved out of the household. Federal regulations state that those responsible for repaying the overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred." 7 CFR § 273.18(a)(4)(i). As the agency admits, this overpayment occurred only if the petitioner was no longer part of the household. Thus, if she was a part of the household, there was no overpayment and if she was not a part of the household, there is no authority to recover the overpayment from her. Either way, she is not responsible for repaying the alleged overpayment.

I am aware that the agency notified the household of the overpayment earlier. However, because the petitioner was not part of that household, she did not receive the notice. I am also aware that the reason she did not receive the notice and the agency did not know she had left the household was because she failed to notify it that she had moved. The Division of Hearings and Appeals "may limit the scope of the hearing to exclude issues that...could have been presented at a prior opportunity for hearing." Wis. Stat. § 49.85(4)(b). Because the term *may* is used, the Division is not required to exercise this authority. I will not exercise it here because the petitioner has had severe health issues that affected her ability to notify the agency that she had moved and because I find no legal basis for the underlying claim against her. (Nothing in this decision prevents the agency from recovering the claim against any adult who remained in the household.)

CONCLUSIONS OF LAW

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end attempts to recover the overpayment of FoodShare described in this decision by any means, including by intercepting her income tax refund.

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 30th day of December, 2014

\sMichael D. O'Brien
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 December 30, 2014.

St. Croix County Department of Human Services
Public Assistance Collection Unit