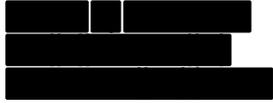




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/159336

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 06, 2014, at Janesville, Wisconsin.

The issue for determination is whether the tax intercept notice was issued in error.

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: Laura Middleton

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Rock County.
2. Petitioner was a member of an assistance group receiving FS at the home of his mother with whom he lived.
3. The agency determined an overpayment and mailed an overpayment notice on 2/7/14.

4. A repayment agreement was mailed on 3/4/14. Petitioner did not respond.
5. Dunning notices were sent on 4/2/14, 5/2/14, and 6/3/14.
6. Petitioner did not respond to any of the notices and made no payments.
7. A tax intercept notice was issued on 7/11/14 indicating a \$3,815 balance due.
8. Petitioner filed a request for hearing on 7/28/14.

DISCUSSION

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.

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. FoodShare Handbook § 7.3.2.10. The record reflects that the Dunning notices were received.

The overpayment notice was sent to petitioner's mother's address in February 2014. But, petitioner could not recall where he was living at that time. The record does not reflect that the overpayment notice was returned to the agency. Furthermore, petitioner received multiple additional notices indicating the overpayment and never took action or inquired until the tax intercept notice. I find that the record indicates his receipt of the overpayment notice as well.

Petitioner conceded at hearing that he received the various notices. His argument, however, was one focusing on the merits of the original overpayment. He claimed that he did not know that his mother was receiving FS on his behalf. He also questioned the amount of the overpayment. But, petitioner's opportunity to contest this has passed. Petitioner conceded that he is the [REDACTED] [REDACTED] that is the subject of this claim having lived with his mother. I note that such a defense is untenable under the law and rules of the program in any event as any adult in the assistance group may be held jointly and severally liable for a FS overissuance. Thus, even at a hearing on the merits, petitioner's argument would not be persuasive.

CONCLUSIONS OF LAW

The agency did not err in its issuance of the tax intercept notice.

THEREFORE, it is

ORDERED

That this matter is 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 15th day of October, 2014

\sJohn P. Tedesco
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 October 15, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit