



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/159526

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 27, 2014, at Milwaukee, Wisconsin.

Pertinent parts of the petitioner's prior DHA 2012 decision in Case No. FOP/141515 have been incorporated into this decision.

The issues for determination are: a) whether the petitioner's appeal of her February 15, 2013 FoodShare (FS) tax intercept is timely; and b) whether the petitioner had a prior opportunity for a hearing on the issue of whether the Department correctly sought recovery of a FS overpayment to collect overpayments of FoodShare benefits during the total period of June 1, 2010 to April 30, 2011 in Case No. FOP/141515.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Simone Johnson, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. During all of 2010 and until December 6, 2011, the petitioner resided with her mother, BH, and her stepfather, TH. The Petitioner helped to take care of her step-father. The Petitioner was an adult as of 2009.
3. Unbeknownst to the petitioner, BH applied for and received FS benefits and included the petitioner in the FS group.
4. The FS Issuance Disbursement History indicates that FS benefits were issued to petitioner's mother (BH) in the amount of \$276/month for the period of June, 2010 through September, 2010 and \$281/month for the period of October, 2010 through April, 2011.
5. On July 13, 2011, the agency issued a Notification of FS Overissuance and Worksheets to the Petitioner notifying her that the agency had identified an overissuance of FS benefits in the amount of \$2,125 for the period of June 1, 2010 through April 30, 2011 and that the agency is seeking to recover that amount. The agency also issued a Notification of FS Overissuance to BH. That Notification indicated that the Petitioner had a right to appeal the agency's action within 90 day of the notice of the overissuance.
6. On June 8, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals in her former case, FOP/141515.
7. In her July 20, 2012 decision in FOP/141515, ALJ Debra Bursinger concluded that the petitioner's June 8, 2012 appeal was untimely and there was no jurisdiction to address the July 13, 2011 FS overpayment issue.
8. The petitioner requested a rehearing, and that rehearing was denied on August 17, 2012.
9. The petitioner did not timely file any appeal to circuit court regarding Case No. FOP/141515.
10. The Department's Public Assistance Collection Unit (PACU) sent a February 15, 2013 FS tax intercept notice to the petitioner at her correct address of record notifying her that the remaining unpaid FS overpayment of \$1,369 would be recovered through interception of her state or federal income taxes or credits. That February 15, 2013 notice stated that the remaining \$1,369 FS overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. That February 15, 2013 FS Tax Intercept Notice was received by the petitioner.
11. The Petitioner mailed an appeal to the Division of Hearings and Appeals (DHA) which was received and date stamped at the DHA on August 1, 2014 regarding her February 15, 2013 FS tax intercept.
12. The petitioner was unable to establish that she had timely filed any FS tax intercept appeal to DHA prior to August 1, 2014.
13. As of the August 1, 2014, due to payments made toward the overpayment and tax interceptions, the remaining amount of petitioner's FS overpayment was zero (fully paid off prior to the August 27, 2014 tax intercept hearing).

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and medical assistance payments made incorrectly. The department 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 § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on August 1, 2014 which is more than one (1) year after the date of the February 15, 2013 FS tax intercept notice which was sent to the petitioner.

During the August 27, 2014 hearing, petitioner was unable to reliably dispute that she had received the February 15, 2013 FS tax intercept notice. The petitioner filed her FS tax intercept appeal on August 1, 2014 which was significantly more than 30 days after the date of the February 15, 2013 tax intercept notice that was mailed to her. Therefore, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly imposed a February 15, 2013 FS tax intercept against the petitioner's taxes, as her appeal is untimely

However, even if the petitioner's appeal had been timely, 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 Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly. The Department of Workforce Development 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)

In the instant case, petitioner agreed that a hearing had been held, and that a decision was issued by ALJ Debra Bursinger in Case No. FOP/141515. See Findings of Fact #2 - #9 above.

During the August 27, 2014 hearing, petitioner questioned why the FS overpayment and interception was seeking recovery from her when her mother, was the FS casehead during the period of June, 2010 through April, 2011 and her mother caused the overpayment. The food stamp regulations permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household.** Based upon the evidence in the hearing record, the petitioner was an adult member of the FS household of her mother which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

Establishing claims against households. **All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against...any household which contains an adult member of another household that received more food stamp benefits than it was entitled to receive.**

(Emphasis added).

As a result, the petitioner is jointly and severally liable along with her mother, BH, for the FS tax intercept. There have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate.

As noted in Findings of Fact #6 and #7 above, the petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but petitioner failed to file any timely appeal to DHA. There have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits and the state must take all reasonable steps necessary to promptly correct any overpayment. See also, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (“...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....”), Wis. Stat. § 49.125(1). The Department correctly utilized tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed a February 15, 2013 FS tax intercept against the petitioner’s taxes, as the petitioner’s appeal is untimely.
2. The Department’s representative stipulated that petitioner’s remaining FS overpayment amount has been paid in full as of August 1, 2014, and there is no longer any FS tax intercept action against the petitioner from that FS overpayment.

THEREFORE, it is

ORDERED

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 24th day of September, 2014

\sGary M. Wolkstein
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 24, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit