



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
FTI/159635

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 04, 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.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of FoodShare benefits from the period of February 14, 2013 to August 31, 2013.

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 who resided in a FS group of six (petitioner, his wife, and their four children) during the FS overpayment period of February 14, 2013 to August 31, 2013.
2. Petitioner's wife, [REDACTED] [REDACTED], was the case head of the FS group of six.

3. [REDACTED] [REDACTED] failed to notify Milwaukee Enrollment Services (MES) at her February 3, 2013 access application (or after that date) that her husband (petitioner) was in her FS household and his earned income from the [REDACTED] Public Schools.
4. On September 12, 2013, Milwaukee Enrollment Services issued a Notification of Food Stamp Overissuance to the petitioner and to his wife at the correct address of record advising them that it had opened Claim no. [REDACTED], and was seeking repayment of \$6,202.00 in FS benefit overpayments from the period of February 14, 2013 to August 31, 2013, due to petitioner's wife's failure to timely report that her husband (petitioner) was in her home and his income (resulting in household income above the FS income eligibility limits).
5. The Department sent an October 8, 2013 repayment agreement and Dunning notices to the petitioner's wife regarding her FS overpayment on November 4, 2013, December 3, 2013.
6. The petitioner's wife died on December 8, 2013.
7. The petitioner did not file any timely appeal to the Division of Hearings and Appeals (DHA) regarding his September 12, 2013 FS overpayment notice.
8. The Department sent a July 11, 2014 FS tax intercept notice to the petitioner at his correct address notifying him that the remaining unpaid FS overpayment of \$6,134.00 would be recovered through interception of his state or federal income taxes or credits.
9. The petitioner mailed an August 4, 2014 appeal letter to the Division of Hearings and Appeals (DHA) requesting an appeal of his July 11, 2014 tax intercept notice and the underlying FS overpayment from the period of February 14, 2013 to August 31, 2014.
10. The petitioner was unable to establish that he had filed any FS overpayment or tax intercept appeal with DHA prior to August 4, 2014.
11. During the August 27, 2014 hearing, the Milwaukee Enrollment Services representative explained that \$68 has been recouped from the petitioner's or his wife's FS benefits as of that date. The remaining amount of petitioner's FS overpayment was \$6,134.00 as of the August 27, 2014 hearing date.

### 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 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)

As noted in Findings of Fact #3 - #5 above, the petitioner or his former wife had the opportunity for a prior hearing on the merits of their FS overpayment but failed to file any timely appeal to DHA.

During the August 27, 2014 hearing, petitioner questioned why the FS overpayment and interception was seeking recovery from him when his wife was the FS casehead during the period of February 14, 2013 to August 31, 2013. 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 his wife 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 his former wife for the FS overpayment and the resultant FS tax intercept.

During the hearing, the petitioner did not contest that his wife had received her FS overpayment or dunning notices. Furthermore, there is no evidence that any of those notices were returned as undeliverable. Moreover, petitioner did not establish with any reliable evidence that he or his wife had any problems with their mail delivery. However, petitioner explained that his wife was very ill during the fall of 2013, and that she may not have opened all her mail from MES. However, petitioner could have opened his mail from MES including his September 12, 2013 FS overpayment notice. In addition, MES representative, [REDACTED], testified that she talked to [REDACTED] during October, 2013 and discussed her FS overpayment. As a result, petitioner's wife was aware of the FS overpayment and could have timely appealed the FS overpayment to DHA. It is very unfortunate that petitioner's wife passed away, but she and petitioner received both written and oral notice of the FS overpayment and could have timely appealed that overpayment.

The petitioner did not dispute the calculation of the FS original overpayment amount of \$6,202.00 and did not dispute that neither he nor his wife had filed a timely appeal of that FS overpayment. In addition, 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 Department that petitioner was overpaid is affirmed. The petitioner explained that it would be a financial burden to repay the FS overpayment and the family was grieving for their mother and his wife and this is an extra burden to repay the overpayment at this time.

However, the Department is required to recover all overpayments of public assistance benefits due to client and non-client error, 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 may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

As dicta, MES should attempt to establish with petitioner a manageable repayment agreement, given the tragic circumstances surrounding this FS overpayment and tax intercept actions.

**CONCLUSIONS OF LAW**

That the Department has correctly certified a public assistance remaining debt of \$6,134.00 as of August 27, 2014 in overpaid FS benefits to the Wisconsin Department of Revenue for state income tax refund intercept from the petitioner.

**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 25th day of September, 2014

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\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 25, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit