



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/160576

PRELIMINARY RECITALS

Pursuant to a petition filed September 15, 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 hearing was held on October 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly instituted a tax intercept.

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: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 20, 2012 the agency established an overpayment claim for \$6,644.00. Petitioner did not appeal the overpayment within the 90 day time limit.
3. On March 4, 2014 the agency sent Petitioner the first dunning notice reminding her that she still needed to repay \$5,978.00 of the \$6,644.00 overpayment.

4. On July 2, 2014 the agency sent Petitioner a repayment agreement.
5. On July 2, 2014 the agency sent Petitioner a second dunning notice reminding her that she still needed to repay \$5,978.00 of the \$6,644.00 overpayment.
6. On August 4, 2014 the agency sent Petitioner a third dunning notice reminding her that she still needed to repay \$5,978.00 of the \$6,644.00 overpayment..
7. On September 12, 2014 the agency sent Petitioner a notice, indicating that it may intercept any tax refund to which she might be entitled to satisfy the \$5,919.00 balance of the \$6,644.00 overpayment of FoodShare benefits.
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 15, 2014.
9. Petitioner did not have a repayment agreement in place when the agency instituted this tax intercept.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

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 and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

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.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was September 12, 2014, and Division of Hearings and Appeals received Petitioner's request for fair hearing on September 15, 2014. This is within the 30 day window, and Petitioner's appeal is timely with regard to the tax intercept issue.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

In this case Petitioner argues that she had arranged a payment plan with the agency. She states that she called the agency as instructed on the letters, and set up a payment plan. The agency was to send her a form that she was to complete and send back with her first payment. She never received this form, and then received notice of the tax intercept. This situation is unfortunate for Petitioner. It very well could be that Petitioner's intention was to set up a payment plan with the agency to avoid further collection efforts like a tax intercept. However, it is clear that the payment plan was not in place prior to this tax intercept. Petitioner admits that she never sent in a payment as she was waiting for the agency to send a form. Petitioner does not dispute that the agency sent her the proper notices or that she owes the underlying debt. She states that she is willing to pay the debt with a payment plan, but that she cannot afford to have her taxes intercepted. Ultimately Petitioner was mailed a repayment agreement in July, which she never returned. She called the agency to set up a payment agreement in July, but never made a payment or took further steps to set up that plan. The case notes reflect that Petitioner called on July 15, 2014, but not again until September 15, 2014. This is after she would have received the tax intercept notice.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

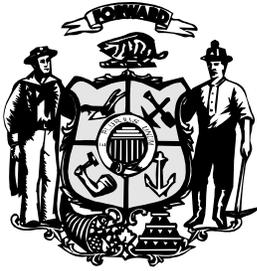
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of October, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 13, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit