



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/160672

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 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 Petitioner the County agency correctly implemented a tax intercept.

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: 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 November 23, 2013 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [redacted], asserting a \$1920.00 overpayment from April 1, 2011 through March 31, 2012.

3. On December 4, 2012 the agency sent Petitioner a repayment agreement for overpayment claim numbers [REDACTED] and [REDACTED]. The repayment agreement states, "failure to complete the repayment agreement and/or make scheduled payments may result in further collection actions including, but not limited to: 1) referral to a credit bureau or collection agency, 2) referral to State and/or Federal tax offset programs, and 3) wage garnishments.
4. On November 4, 2013 the agency sent Petitioner a repayment agreement for overpayment claim numbers [REDACTED]. The repayment agreement states, "failure to complete the repayment agreement and/or make scheduled payments may result in further collection actions including, but not limited to: 1) referral to a credit bureau or collection agency, 2) referral to State and/or Federal tax offset programs, and 3) wage garnishments. The notice stated that Petitioner owed \$1,606.00 for that overpayment.
5. On November 4, 2013 the agency sent Petitioner a dunning notice reminding her about that \$1,606.00 was still due for overpayment claim number [REDACTED].
6. On December 3, 2013 the agency sent Petitioner a second dunning notice.
7. Between January 2014 and May 2014 Petitioner maintained a \$20 per month payment plan. She made \$20 payments in each of those months.
8. On September 3, 2014 the agency sent Petitioner another repayment agreement for overpayment claim numbers [REDACTED]. The repayment agreement states, "failure to complete the repayment agreement and/or make scheduled payments may result in further collection actions including, but not limited to: 1) referral to a credit bureau or collection agency, 2) referral to State and/or Federal tax offset programs, and 3) wage garnishments. The notice stated that at that time Petitioner still owed \$1,451.00 for that overpayment.
9. On August 4, 2014 the agency sent Petitioner a third dunning notice. At that time \$1,451.00 remained outstanding for overpayment claim number [REDACTED].
10. 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 \$1,451.00 balance of the overpayment of FoodShare benefits.
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 18, 2014.

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 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 May 16, 2014, and division of hearings and appeals received the petitioner's request for fair hearing on May 21, 2014. This is within the 30 day window, and the 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 sought to challenge the underlying overpayment. This overpayment occurred in between April 1, 2011 and March 31, 2012. The overpayment occurred because Petitioner reported her child was living with her when in fact the child was living with the father. Petitioner maintains that this child was living with her, and there was not an overpayment. I note that included in the agency's exhibits are orders from Family Court from February 10, 2011 and November 19, 2012. In both of those orders it states that Petitioner's children are living with the father. The February 10, 2011 order states that the children are with the father Monday through Friday, and then in November 2012 the father is given sole legal custody with primary placement.

The Division of Hearings and Appeals is without jurisdiction to address the underlying overpayment. If Petitioner wanted to challenge the overpayment, she should have challenged that in 2012. The underlying overpayment occurred because Petitioner reported the children lived with her when the family court paperwork revealed that the children were living with their father. Petitioner states that the father wrote a letter, and that he would be willing to testify that the children were living with her during the overpayment period. The records from Family Court reveal that the children were legally placed with the father during the overpayment period, thus it appears that the agency correctly assessed the overpayment. However, I am without jurisdiction to decide that issue. Petitioner should have challenged the underlying overpayment in 2012. She never filed an appeal at that time. An appeal of the tax intercept after Petitioner has made some payments on an overpayment is not the appropriate time to address the underlying overpayment.

At issue here is whether the agency correctly implemented the tax intercept. In order for the agency to correctly implement a tax intercept Petitioner must have received three or more dunning notices and the debt must be, valid and legally enforceable, at least \$20 for intercept of State taxes, and at least \$25 for intercept of federal taxes, at least 30 days from notification of Overissuance, and for a Federal tax intercept not more than 10 years past due from notification date except in fraud cases, and the debt must be free from any current appeals, and incurred by someone who has not filed bankruptcy, nor has their spouse. In this case there were three dunning notices, and none of the other limitations apply.

CONCLUSIONS OF LAW

The agency correctly implemented the tax intercept.

THEREFORE, it is

ORDERED

That the Petition is dimssed.

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 14th day of October, 2014

\sCorinne Balter
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 14, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit