



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/161229

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner's tax refund to collect a FoodShare (FS) overpayment, a hearing was held on November 13, 2014, by telephone.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Adam Spilter
Green Lake County Dept. of Human Services
571 County Road A
Green Lake, WI 54941

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green Lake County.
2. Petitioner received FS in 2013 for a five person household. On December 9, 2013, the county notified petitioner that she was overpaid \$2,637 in FS from April 1 through September 13, 2013 because she failed to report earned income, claim no. [REDACTED]. Petitioner did not appeal the overpayment claim.

3. The claim initially was recouped from monthly FS allotments, but FS ended for the household effective June 1, 2014.
4. "Dunning" notices were sent to petitioner in June, July, and August, 2014. When petitioner did not respond, the PACU sent petitioner a notice informing her that it intended to intercept to state income tax refunds as a means of collecting the overpayment. Petitioner then filed this appeal.

DISCUSSION

Wis. Stat., §49.85(2)(a), 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 overpayments of general relief benefits, FS, and Medical Assistance.

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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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 Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error..." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner filed this appeal to contest the county's calculation of the overpayment claim, but any such appeal had to be filed within 90 days of the claim. At this point the merits of the claim cannot be contested. This office also does not have authority to reduce the claim based upon good cause or hardship; I can find only that the PACU has the authority to utilize the proposed tax intercept.

CONCLUSIONS OF LAW

Petitioner's appeal of a 2013 FS overpayment claim was untimely, and thus the agency may use all legal means, including tax intercepts, to recover it.

THEREFORE, it is

ORDERED

That 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 17th day of November, 2014

\sBrian C. Schneider
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 November 17, 2014.

Green Lake County Department of Human Services
Public Assistance Collection Unit