



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/160838

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on January 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely.

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: Kristine DeBlare, Interstate Agent
Office of the Inspector General
P.O. Box 309
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 20, 2014, the Office of Inspector General (OIG) sent the Petitioner a Notification of FoodShare Overissuance, Claim number [REDACTED], indicating that the Petitioner was overpaid FoodShare benefits in the amount of \$791.00 for the period of August 21, 2013 to January 31, 2014, due to a failure to "report accurate household members". (Exhibit 3)

3. This overpayment was based upon OIG's belief that the Petitioner incorrectly claimed her stepdaughter as part of the household. OIG believed the child to be living in Minnesota with her biological mother. (Testimony of ██████████)
4. On March 4, 2014, OIG sent the Petitioner a Repayment Agreement for FoodShare Overpayment. (Exhibit 4)
5. On April 2, 2014, May 2, 2014 and June 3, 2014, OIG sent the Petitioner dunning notices (reminders) about the overpayment. (Exhibit 2)
6. On July 11, 2014, the Public Assistance Collection Unit (PACU) sent the Petitioner a notice, advising her that her State income tax refund may be intercepted to satisfy the overpayment. (Exhibit 1)
7. On September 18, 2014, the Petitioner sent an e-mail to PACU indicating that she wanted to dispute the overpayment claim. (Exhibit 10)
8. On September 24, 2014, PACU forwarded Petitioner's hearing request to the Division of Hearings and Appeals. (Exhibit 10)
9. On or about September 24, 2014, the Petitioner sent PACU her step-daughter's attendance records, showing that the child was enrolled in school in Wisconsin, where the Petitioner lived. (Exhibit 11) OIG does not dispute the accuracy or authenticity of the attendance record. (Testimony of ██████████)
10. On September 27, 2014, PACU forwarded the attendance records to the Division of Hearings and Appeals. (Exhibit 11)

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.

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 FoodShare, overpayment of Aid to Families with Dependent Children 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 July 11, 2014. As such, Petitioner needed to file her appeal by August 10, 2014. Her appeal was not filed until late September 2014. As such, her appeal is untimely, with regard to the issue of the tax intercept, and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she also wished to appeal the underlying overpayment claim, because her stepdaughter was, in fact, living with her in Wisconsin. However, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the underlying overpayment claim is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the overpayment determination.

Even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the overissuance, Petitioner's appeal regarding the overpayment claim is also untimely.

An appeal of a negative action, including determination of an overissuance, must be filed within 90 days of the date of that action. *7 CFR, §273.15(g)*.

In this case, the date of action was February 20, 2014, the date the agency sent Petitioner the Notification of FoodShare Overissuance. (See Exhibit 3) As such, Petitioner needed to file her appeal of the overissuance determination by May 21, 2014. She did not file an appeal until late September 2014, well past the appeal deadline. As such, Petitioner's appeal of the underlying overpayment claim is untimely and there is no jurisdiction to hear the merits of that issue.

Petitioner argues that she is not being treated fairly, since she has provided proof that the child was living with her, via the child's attendance records, which confirm the child was enrolled in school where the Petitioner resides. Further, OIG no longer disputes the fact that the child was living with her. It is OIG's position that it will not discharge the overpayment related to the child's residence, because they now believe the Petitioner might have provided incorrect information regarding the residence of the child's father, even those are two, separate and distinct claims and OIG has not yet opened an investigation into the residence of the child's father.

Petitioner is correct that pursuant to Federal Regulations, 7 CFR §273.18(3)(8)(ii) in particular, that the state agency must discharge a claim when it finds that the claim is invalid:

7 CFR §273.18 (e)(8)(ii): The following is our claim termination policy:

As a State agency, if . . .	Then you . . .	Unless . . .
(A) you find that the claim is invalid	must discharge the claim and reflect the event as a balance adjustment rather than a termination	it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).
(B) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(C) the claim balance is \$25 or less and the claim has been delinquent for 90 days or more	must terminate and write-off the claim	other claims exist against this household resulting in an aggregate claim total of greater than \$25.
(D) you determine it is not cost effective to pursue the claim any further	must terminate and write-off the claim	we have not approved your overall cost-effectiveness criteria.
(E) the claim is delinquent for three years or more	must terminate and write-off the claim	you plan to continue to pursue the claim through Treasury's Offset Program.
(F) you cannot locate the household	may terminate and write-off the claim	
(G) a new collection method or a specific event (such as winning the lottery) substantially increases the likelihood of further collections	may reinstate a terminated and written-off claim	you decide not to pursue this option.

However, because Petitioner's appeal was filed too late, I do not have jurisdiction to order OIG / PACU to take corrective action.

The Petitioner will likely have to deal directly with the Department of Health Services Office of Legal Counsel (608) 266-8428, P. O. Box 7850, Madison, WI 53707-7850.

The Petitioner might wish to seek the assistance of Legal Action of Wisconsin, (414) 278-7722, 230 W. Wells St., Milwaukee, WI 53203 for free or reduced cost legal services.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is 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 Milwaukee,
Wisconsin, this 20th day of January, 2015.

\sMayumi M. Ishii
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 January 20, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit