



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/161852

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 8, 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 December 23, 2014, by telephone. A hearing set for November 26, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether the Department of Health Services correctly (1) determined that the petitioner was overpaid FoodShare benefits, and (2) sought to intercept the petitioner's state income tax refund to collect a FoodShare overpayment.

There appeared at that time 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 PARIS agent  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently a resident of Milwaukee County.

2. The petitioner has been continuously incarcerated with the Wisconsin Department of Corrections from January 10, 2006 to December 2, 2014. Per a DOC official, the petitioner did not have access to the internet during his incarceration. See, Exhibit B, letter from [REDACTED].
3. On June 7, 2011, someone other than the petitioner filed an online FS application in Wisconsin, using the petitioner's name and an address of [REDACTED]. On June 24, 2011, a telephonic interview was performed with "Mr. [REDACTED]," who called in asserting that he was homeless and had no telephone. During a scheduled November 2011 case review, the worker became suspicious of "Mr. [REDACTED]" telephonic responses, and the agency then confirmed the petitioner's incarceration. Benefits were discontinued December 1, 2011. The petitioner was not eligible for any FS, due to his incarceration. Thus, the FS issued as a result of this application were an overpayment, for which the responsible party is liable.
4. On November 27, 2012, the county agency issued a *Notification of FS Overissuance* (claim # [REDACTED]) to the petitioner at an address of [REDACTED]. The agency determined that there had been an overpayment to the petitioner of \$1,160 for the June 7 through November 30, 2011, period. The agency issued a FS Repayment Agreement to the petitioner in December 2012, followed by several dunning letters, all to the same [REDACTED] address. The petitioner is not familiar with the [REDACTED] address, and did not live there from June 2011 through the present time. He did not receive these notices.
5. On April 12, 2013, the Department issued a state tax refund interception notice to the petitioner, at an address of [REDACTED]. (The letterhead on the refund interception notice is that of the Department of Children and Families because the Department has a Memorandum of Understanding in place with DCF that allows it to issue tax refund interception notices on the Department's behalf). The notice advised that the Department intended to retain up to \$1,160 from the petitioner's state income tax refund to satisfy claim # [REDACTED]. The petitioner did not receive the interception notice.
6. In the summer of 2014, the petitioner attempted to cash in his savings bonds, so that he might have cash available upon his prison release. He was unsuccessful, and was advised that the Wisconsin Department of Revenue had confiscated approximately \$1,076. The petitioner initially thought it was an erroneous child support arrearage levy, but then learned it was an FS overpayment recovery. He then filed this appeal.

### DISCUSSION

The Department is required to recover all overpayments of public assistance benefits:

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); see also 7 C.F.R. § 273.18(a) .

The Department may utilize tax refund interception as a means of recovering the overpayment. Wis. Stat. § 49.85. Section 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 overissuance of Food Share benefits.

The Department 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 Department has issued the required refund interception notice here.

I. JURISDICTION TO REVIEW THE MERITS OF THE UNDERLYING OVERPAYMENT DETERMINATION.

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 of health services 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)

The petitioner has *not* had a prior opportunity for hearing on the merits of the overpayment. He did not file a hearing request to challenge that overpayment within the 90 day appeal period. However, his failure to so file is understandable, because he did not receive notification of the FS overpayment. Thus, the petitioner must be given an opportunity to argue the validity of the overpayment decision here.

II. THE PETITIONER IS NOT LIABLE FOR THE FS OVERPAYMENT THAT OCCURRED FROM JUNE THROUGH NOVEMBER 2011.

Someone unlawfully applied for FS in June 2011, using the petitioner's name, and supplying a false mailing address for him. Therefore, whoever received and used the 2011 FS was overpaid is liable for recovery of that overpayment.

However, collection efforts against the petitioner are not appropriate. Collections efforts are to be made against adults who were *household members* at the time of the overpayment. 7 C.F.R. §§ 273.1(a); 273.18(a)(1),(4). See also *FS Wisconsin Handbook (FSWH)* at §§7.3.1.2 and 3.3.1.1 ("food unit"), online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The petitioner was not a member of the one-person household who was fraudulently using his name. The Department has the burden of showing that the petitioner was the culpable party, and that burden has not been met due to DOC official [REDACTED]'s letter.

The determination by the Department that the petitioner was overpaid is reversed. The Department's PAC Unit will be directed to cease all recovery efforts on this claim, including tax refund interception. If the Wisconsin PACU has collected money from the petitioner on this claim through FS benefit recoupment or state income tax refund interception, it must return the money to the petitioner. It is possible that the federal government may have taken money from the petitioner; as a state Judge, I have no authority to order the federal government return funds to him.

**CONCLUSIONS OF LAW**

1. Jurisdiction is present to consider the merits of the underlying overpayment determination against the petitioner, as he did not receive a *Notification of FS Overissuance* for claim # [REDACTED].
2. The petitioner was not a member of the overpaid subject FS household in June through November 2011.
3. The petitioner is not liable for any portion of the FS claim # [REDACTED]. Certification for tax refund interception against the petitioner for that claim was incorrect, and must be reversed.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be *remanded* to the Department's agent, PACU, to cease collection efforts, against the petitioner only, on claim # [REDACTED]. This action shall be taken within 10 days of the date of this decision.

If the petitioner has already had his state income tax refund intercepted for this claim, Wisconsin PACU shall take the necessary steps to have the appropriate refund issued to the petitioner within a reasonable period. If a refund is owed, PACU shall advise the Division of Hearings and Appeals as to its projected refund date, within 10 days of the date of this Decision.

**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 30th day of January, 2015

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\sNancy J. Gagnon  
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 30, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit