



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FTI/161931

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 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 December 10, 2014, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for December 3, 2014 was rescheduled.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County who resided in a FS group of three during the FS overpayment period of June 1, 2011 to June 30, 2011.

2. On November 15, 2013, Milwaukee Enrollment Services (MES) issued a Notification of Food Stamp Overissuance to the petitioner at her correct address of record ([Redact]), WI [Redact] advising her that it was seeking repayment of \$518.00 in FS benefit overpayments from the period of June 1, 2011 to June 30, 2011, due to the client error of failure to report all her earned income to MES. See Exhibit 3. The petitioner received Exhibit 3.
3. The Department sent Dunning notices to the petitioner regarding her FS overpayment on January 3, 2014, February 4, 2014, and March 4, 2014.
4. The petitioner did not file any timely appeal to the Division of Hearings and Appeals (DHA) regarding her November 15, 2013 FS overpayment notice.
5. MES discontinued the petitioner's FS benefits effective February 1, 2014 due to household income above the FS income eligibility limits.
6. The Department sent an April 11, 2014 FS tax intercept notice to the petitioner notifying petitioner that the remaining unpaid FS overpayment of \$493.00 would be recovered through interception of her state or federal income taxes or credits.
7. The Petitioner mailed an appeal letter to the Division of Hearings and Appeals (DHA) which was received at DHA on November 14, 2014 regarding her \$493 tax intercept notice.
8. The petitioner was unable to establish that she had filed any FS overpayment or tax intercept appeal with DHA prior to November 14, 2014.
9. The petitioner moved during October or November, 2014 from her [Redact] to her current address of [Redact].
10. During the December 10, 2014 hearing, the Milwaukee Enrollment Services representative explained that \$25 has been recouped from the petitioner's FS benefits as of that date. The remaining amount of petitioner's FS overpayment was \$493.00 as of the December 10, 2014 hearing date.

DISCUSSION

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 Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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)

As noted in Findings of Fact #2 - #4 above, the Petitioner had the opportunity for a prior hearing on the merits of her FS overpayment but failed to file any timely appeal to DHA.

During the December 10, 2014 hearing, the petitioner admitted that she received her FS overpayment notice (exhibit 3), and did not contest that she also received her three Dunning notices. Furthermore, there is no evidence that any of those notices were returned as undeliverable. The petitioner did not dispute the calculation of the FS original overpayment amount of \$518.00, and did not dispute that she had not filed a timely appeal of that FS overpayment. In addition, there have been no issues raised regarding the accuracy of the tax intercept calculation of \$493, which is the subject of this review, I must conclude that the interception action is appropriate.

During the hearing, petitioner alleged that she did not timely receive the April 11, 2014 tax intercept notice, and thus she did not appeal that intercept notice until November 14, 2014. The petitioner explained with some inconsistency in her testimony that she moved from her old residence to her current Redact residence during October or November, 2014. Nevertheless, petitioner argued vehemently that she did not receive the April 11, 2014 notice, and thus her tax intercept appeal should be timely.

In any case, based upon the above, the determination by the Department that petitioner was overpaid is affirmed. The petitioner explained that it would be a difficult financial burden to repay the FS overpayment. However, the Department is required to recover all overpayments of public assistance benefits due to client and non-client error, and the state must take all reasonable steps necessary to promptly correct any overpayment. See also, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (“...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). The Department may utilize tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

That the Department has correctly certified a public assistance remaining debt of \$493.00 as of December 10, 2014 in overpaid FS benefits to the Wisconsin Department of Revenue for state income tax refund intercept from the petitioner.

THEREFORE, it is

ORDERED

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 6th day of January, 2015

\sGary M. Wolkstein
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 January 6, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit