



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/162107

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 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 21, 2015, at Madison, Wisconsin. A hearing previously scheduled for December 16, 2014, was rescheduled at petitioner's request.

The issue for determination is whether the Department may intercept the petitioner's income tax return to recover an overpayment of FoodShare

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
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Gary, Indiana.

2. On June 5, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating his household was overissued FoodShare benefits in the amount of \$1,193.00 for the period of April 3, 2013 to September 30, 2013. (Exhibit 3-2)
3. On June 5, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating his household was overissued FoodShare benefits in the amount of \$1,628.00 for the period of October 14, 2013 to June 30, 2014. (Exhibit 3-3)
4. The agency sent Petitioner a repayment agreement on July 2, 2014. (Exhibit 3-4)
5. The agency sent the Petitioner dunning notices (reminders about the debt) on August 4, 2014, September 3, 2014 and October 2. (Exhibits 3-5 – 3-7)
6. On November 14, 2014, the agency sent the Petitioner a notice of State tax intercept, advising him that, “Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt.” (Exhibit 1)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 21, 2014. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped. The respondent based its overpayment determination on its assertion that petitioner was not a Wisconsin resident during the overpayment periods.

The Petitioner filed an appeal because he does not think he should be held liable for the overpayment underlying the tax intercept.

With regard to the underlying overpayment, the Petitioner’s appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient’s request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner’s November 21, 2014, appeal was filed well beyond 90-days from the date of the June 5, 2014, overpayment notice. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment. I note that the petitioner contacted the respondent in September of 2014, discussed the overpayment, but still waited an additional two months to file his appeal. It is untimely.

With regard to the State Tax Intercept, Petitioner filed this appeal to argue that it is unfair that the agency is recovering from him. He noted that he never signed up for FoodShare in Indiana, and while he had received Medical Assistance benefits in Indiana, the respondent’s investigation of the instant FoodShare matter resulted in at least a temporary loss of those benefits allegedly because Indiana was told that

petitioner resided in Wisconsin. As to the first assertion, it is true that petitioner did not receive Indiana FS benefits; however, that was not for lack of trying. Petitioner applied for FS benefits in Indiana on June 11, 2013, November 6, 2013, and June 17, 2014. (Exhibit 3-9). Petitioner's applications were denied. In any event, the sole issue remaining for determination is whether the notice of intended tax intercept was correctly undertaken by the respondent. 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 employ a state tax intercept, the respondent must have sent the petitioner three or more dunning notices. *FSH* § 7.3.2.10. Furthermore, a person who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a person has been sent three dunning notices, s/he is subject to both tax intercept and monthly repayment. *FSH* § 7.3.2.12. Petitioner was sent the three dunning notices, and the record before me does not indicate that a repayment agreement was executed by the petitioner. As such, the respondent has demonstrated that it has properly pursued a state tax intercept here.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals cannot hear the merits of an overpayment claim following notice of a tax intercept when the person did not appeal the original overpayment notice timely.
2. The PACU may utilize a tax intercept to recover the claim in this case.

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 4th day of February, 2015.

\sPeter McCombs
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 February 4, 2015.

Public Assistance Collection Unit

Public Assistance Collection Unit