



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FTI/162142

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Jackson County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 15, 2015, at Black River Falls, Wisconsin.

The issue for determination is whether the agency correctly seeks to intercept the petitioner income tax refund to recover an overpayment of FoodShare.

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
Jackson County Department of Human Services
420 Hwy 54 West
Po Box 457
Black River Falls, WI 54615

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redacted) was a resident of Wisconsin. She now lives in Minnesota.

2. The county agency seeks to recover \$16,116 in FoodShare the petitioner's household received from June 1, 2009, through December 31, 2012. The petitioner was an adult throughout this period.
3. The agency notified the petitioner of the overpayment at her last known address on October 23, 2013. It sent a repayment agreement to her last known address on November 4, 2013. It sent dunning notices to her last known address on December 3, 2013, March 4, 2014, April 2, 2014, and May 2, 2014.
4. The agency notified the petitioner on September 12, 2014, that it intended to intercept her taxes to recover the FoodShare overpayment.

### DISCUSSION

State FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). An agency may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amount it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. Federal regulations state that those responsible for repaying the overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred." 7 CFR § 273.18(a)(4)(i). The Division of Hearings and Appeals "may limit the scope of the hearing to exclude issues that...could have been presented at a prior opportunity for hearing." Wis. Stat. § 49.85(4)(b). The department seeks to recover \$16,116 in FoodShare that her household received from June 1, 2009, through December 31, 2012, by intercepting her tax refund.

The petitioner's son testified that she has had dementia for some time, leaving her unable to care for herself. The overpayment occurred because her caretakers did not report all of their income. He contends that his mother lacked the mental capacity to participate in any scheme to swindle the FoodShare program. I believe him. Unfortunately, nothing in the law exempts those in her position from being responsible for any overpayment that occurs in a FoodShare household they are part of. Therefore, I must uphold the agency's decision. But, as I explained at the hearing, this decision has little practical effect because the petitioner does not receive a tax refund and she will have no estate that the department can fgmake a claim against.

### CONCLUSIONS OF LAW

The Department may intercept the petitioner's federal income tax return to recover the overpayment of FoodShare described in this decision.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 Madison,  
Wisconsin, this 28th day of January, 2015

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\sMichael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 28, 2015.

Jackson County Department of Human Services  
Public Assistance Collection Unit