



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FTI/162249

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 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 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is

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 signature
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 Milwaukee County.
2. Petitioner's sister, M.S. leased space from petitioner during part of 2013 and 2014.
3. Petitioner referred her sister to the respondent alleging that M.S. was attempting to defraud the FS program by reporting incorrect rental payments to petitioner.

4. Petitioner received a notice on or about August 1, 2014, informing her of an Administrative Disqualification Hearing regarding an asserted FS overpayment.
5. Petitioner signed a waiver of the Administrative Disqualification hearing, but did not admit to any facts as asserted by the Office of the Inspector General.
6. On November 14, 2014, the respondent issued a notice of tax intercept to the petitioner asserting that any tax refunds may be intercepted to be applied toward her outstanding debt related to a FS overpayment in the amount of \$2,070.

### DISCUSSION

The level of FoodShare benefits depends upon a household's size and income. FoodShare regulations require state agencies to "establish a claim against any household that has received more food stamp benefits than it is entitled to receive." 7 CFR § 273.18(a). A household consists of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR § 273.1(a)(3). "Each person who was an adult member of the household when the overpayment...occurred" is responsible for paying the claim. 7 CFR § 273.18(4)(i). *FoodShare Wisconsin Handbook*, § 7.3.1.2. The Department may intercept tax refunds to recover an overpayment of FoodShare. Wis. Stat. § 46.85.

The petitioner acknowledges that she failed to report certain rental income to the respondent, and she has accepted a one year disqualification penalty resulting from an intentional program violation. See, *Shawlin Decision*, FOF/159428, December 9, 2014. Petitioner opted to sign a Waiver of Administrative Disqualification Hearing, whereby she would receive a penalty, but did not admit the facts as presented. Specifically, she contests her liability for an overpayment of FS benefits for the time period of July, 2013 – March, 2014.

It would appear that there may be an issue of timeliness in this matter, though the respondent has not determined to pursue that issue, nor has it provided any documentary evidence to establish that petitioner's appeal of the tax intercept or the underlying overpayment was untimely. Petitioner testified that when she received notice of the Administrative Disqualification Hearing in August of 2014, she assumed that she would be able to contest the overpayment at that time. She was informed by the Administrative Law Judge in that matter that an appeal of the specific overpayment would require that she initiate an appeal of her own, which she did shortly after her intentional program violation matter was concluded. See, Exhibit 1.

The respondent must notify a debtor that it intends to certify the overpayment to the Department of Revenue for setoff from 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).

I concluded that the petitioner has not had a prior opportunity for hearing on the merits of the overpayment. She did not immediately file a hearing request to challenge the overpayment following its

origination in June, 2014.<sup>1</sup> Shortly after the overpayment notices went out, the respondent notified the petitioner of her Administrative Disqualification Hearing. That notice references the overpayment and states that, “[a]n Administrative Disqualification Hearing has been scheduled to review this evidence and determine if the allegations are true.” Petitioner credibly testified that she thought that she would have an opportunity to address the overpayments at this hearing. When the Administrative Law Judge advised her that she would need a separate appeal to contest the overpayment, petitioner complied. As such, the petitioner has not had a prior opportunity for a hearing on the merits of the overpayment, and this appeal is timely.

The burden of proof in this proceeding is “preponderance of the evidence”. The moving party (the respondent) must present information sufficient to make a *prima facie* showing that it is correct in its finding that petitioner was overpaid and that it correctly seeks to intercept her tax refund. The petitioner must then present evidence sufficient to overcome this case by a preponderance of the evidence. Petitioner contest any liability for an overpayment during the period of July, 2013 – October, 2013, and further argues that the respondent’s calculations for the period of November, 2013, through March, 2014 are incorrect and unreliable. I concur that the respondent has not presented enough evidence to make its *prima facie* case for either an overpayment or the issuance of a tax intercept.

Specifically, the petitioner was able to establish an error on the Foodshare overpayment worksheet, wherein the respondent incorrectly input the amount of FS issued in the months of December, 2013 – March, 2014. See, Exhibit 2. The respondent concedes this error, and I note that the error results in an incorrect figure identified on the tax intercept notice. See, Exhibit 3.

Petitioner also questioned the rental income that was attributed to her. Respondent’s representatives testified that self-employment earnings included on the Foodshare overpayment worksheet (\$800/month July, 2013 – March, 2014) were based upon information received from petitioner’s sister and lessee, M.S. The statements attributed to MS are hearsay, and are contradicted by testimony and rental receipts supplied by the petitioner. Exhibit 2. When questioned regarding its investigation of the rental income, respondent indicated that it did not seek out any further evidence of said income beyond the information provided by M.S. Petitioner further testified that she never signed a lease to rent space to her sister, and asserted that any lease provided by her sister was a forgery. The respondent’s representatives provided no substantive rebuttal of this evidence, and they did acknowledge that the agency was aware that the petitioner had referred her sister, M.S., for fraud regarding the rental issue. Ironically, reporting her sister’s alleged fraud resulted in the overpayment asserted herein against the petitioner.

Based on the review of the information before me and the testimony provided at hearing, I find that the respondent has failed to establish that petitioner received self-employment income of \$800 monthly during the period of July, 2013, through March, 2014. I further find that the respondent has not established that its FS overissuance calculations for the months of December, 2013 – through March, 2014, are accurate due to budgeting of incorrect FS issuance figures. Because the respondent has not established that it correctly calculated an overissuance of FS benefits to petitioner, and because it has not established that the debt indicated on the November 14, 2014, Notice of tax intercept is correct, the respondent has no authority to intercept petitioner’s tax refund.

### **CONCLUSIONS OF LAW**

1. The respondent (a) has not established that petitioner received self-employment income of \$800.00 per month between July, 2013, and March, 2014, and (b) has determined the asserted FS overissuance using an incorrect amount of FS issued during the months of December, 2014 through March, 2014.

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<sup>1</sup> I note that the overpayment notices were not completed until June 9, 2014, at the earliest, pursuant to electronic Case Comments submitted by the respondent in the Administrative Disqualification Hearing (see, Exhibit 2, *Shawlin Decision*, FOF/159428, December 9, 2014).

2. The respondent has not established an overpayment of FS benefits to petitioner during the months of July, 2013, and March, 2014.
3. The Department has no authority to intercept the petitioner's taxes because it has not correctly identified an accurate debt owed by petitioner.

**NOW, THEREFORE, it is**

**ORDERED**

That this matter be remanded to the Public Assistance Collections Unit with instructions that, within 10 days of the date of this decision, it rescind FoodShare overpayment Claim No. Redact and cease all collections activity related thereto. Furthermore, the respondent shall not attempt to intercept the petitioner's future tax refunds to recover this claim because this decision has determined on the merits that she is not responsible for the asserted overpayment.

**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 14th day of January, 2015.

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 14, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit