



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
[Redact]
[Redacted]

DECISION

FTI/162339

PRELIMINARY RECITALS

Pursuant to a petition filed December 2, 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 ["PACU"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on January 7, 2015.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following FS overpayment Claim: Claim # [Redact]; June 1, 2013 to December 31, 2013; \$737.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redact]
[Redacted]

Respondent:

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

BY: [Redact], PARIS Agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redact]) was a resident of Wisconsin.

2. The following Claim was established against petitioner for an overpayment of FS: Claim # Redact; June 1, 2013 to December 31, 2013; outstanding balance \$737.00.
3. Petitioner was sent a computer-generated *Notification of FS Overissuance* notice dated December 18, 2013 relating to FS overpayment in *Findings of Fact #2*, above; petitioner never received that notice because he was living in Washington, D.C. at that time.
4. A written notice from State of Wisconsin, dated May 16, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*, concerning Claim # Redact was sent to petitioner at an address in Milwaukee, Wisconsin; petitioner never received that notice because he was living in Washington, D.C. at that time; *Case Comment* compute records show that as of February 27, 2014 Wisconsin had an address for petitioner in Washington, D.C.
5. The FS overpayment in *Findings of Fact #2*, above, resulted from the fact that petitioner was not a resident of Wisconsin at the time of the overpayment.

### DISCUSSION

The state shall, at least annually, certify to the Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Aid to Families with Dependent Children ["AFDC"], an overpayment of Medical Assistance ["MA"], and an overpayment of Wisconsin Works ["W-2"]. Wis. Stat. § 49.85(2) (2011-12).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a hearing. Wis. Stat. § 49.85(3) (2011-12).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."

Wis. Stat. § 49.85(4) (2011-12).

In this case petitioner never received the March 7, 2014 *Notification of FS Overissuance* that was sent to him and, therefore, never had a prior opportunity for a Hearing. Petitioner's testimony was credible in this regard. It follows that the above quoted statutory language does not limit the scope of the issues to be considered here.

PACU argues that petitioner's request for a Hearing concerning the tax intercept was not made in a timely manner. An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). However, PACU is required to send the notice to petitioner's last-known address. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2011-12). That was not done in this case. *Case*

*Comment* compute records show that as of February 27, 2014 Wisconsin had an address for petitioner in Washington, D.C. Therefore, petitioner's request for a Hearing concerning the tax intercept will not be dismissed as untimely made.

PACU presented convincing evidence that was not a resident of Wisconsin during the time period in question. Namely, the fact that his FS was used almost exclusively (and frequently) in Washington, D.C. from May 6, 2013 onward. Petitioner did nothing to dispute this besides asserting that he was in Wisconsin. Petitioner's assertion is not credible.

### CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following Claim against petitioner for an overpayment of FS and intercept petitioner's Wisconsin State Income Tax refund: Claim # Redact; June 1, 2013 to December 31, 2013; \$737.00.

**NOW, 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 20th day of January, 2015

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\sSean P. Maloney  
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 20, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit