



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/162442

PRELIMINARY RECITALS

Pursuant to a petition filed December 08, 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 January 06, 2015, at Milwaukee, Wisconsin.

The issues for determination are: a) whether the petitioner’s appeal of his September 12, 2014 FoodShare (FS) tax intercept is timely; and b) whether the petitioner had a prior opportunity for a hearing on the issue of whether the Department correctly sought recovery of a FS overpayment to collect overpayments of FoodShare benefits during the total period of September 1, 2011 to February 28, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jose Silvestre, Jr., 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 # ) is a resident of Milwaukee County who resided with his wife,  , and their daughter in his FoodShare (FS) household during the total FS

- overpayment period of September 1, 2011 to February 28, 2013. Petitioner was the primary person in this FS household.
2. On September 11, 2013, Milwaukee Enrollment Services (MES) issued two Notifications of Food Stamp Overissuance to the petitioner at his correct address of record (with separate overpayment notices to petitioner's wife, [REDACTED]). Those notices indicated that the county agency was seeking repayment of a total of \$8,133 (\$4,553 and \$3,580 in FS benefit overpayments during the entire period from September 1, 2011 to February 28, 2013, due to failure to timely report his wife's employment and income at time of reviews or submission of SMRFs. See Exhibit 3.
 3. Neither the petitioner nor his wife filed any timely appeal to the Division of Hearings and Appeals (DHA) regarding any of the September 11, 2013 FS overpayment notices.
 4. MES sent Dunning notices to the petitioner on April 2, 2014, May 2, 2014, and June 3, 2014. See Exhibit 1.
 5. The Department's Public Assistance Collection Unit (PACU) sent a September 12, 2014 FS tax intercept notice to the petitioner at his correct address of record notifying him that the remaining unpaid FS overpayment of \$7,973 would be recovered through interception of his state or federal income taxes or credits (for the two FS overpayment notices). See Exhibit 2. That September 12, 2014 notice stated that the remaining \$7,973 FS overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. That September 12, 2014 FS Tax Intercept Notice was received by the petitioner.
 6. The Petitioner telephoned the Division of Hearings and Appeals (DHA) on December 8, 2014 and that appeal was thus "received" at DHA on December 8, 2014 to appeal his September 12, 2014 FS tax intercept notice. See Exhibit 4.
 7. The petitioner was unable to establish that he had timely filed any FS overpayment or tax intercept appeal to DHA prior to December 8, 2014.
 8. The petitioner was unable to establish with any reliable evidence that he had problems with his mail delivery.
 9. As of the January 6, 2015 hearing date, the remaining amount of petitioner's FS overpayment was \$7,973.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue 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 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 § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on December 8, 2014, which is about three months after the date of the September 12, 2014 FS tax intercept notice which was sent to the petitioner.

During the January 6, 2015 hearing, petitioner attempted unconvincingly to deny that he had received the FS overpayment or FS tax intercept notices. See Exhibits 2 and 4. However, those notices were sent to the petitioner at his correct address, and were not returned to MES as undeliverable. Petitioner has resided at the same address since 2011. In addition, petitioner was unable to establish with any reliable evidence that he had any problems with his mail delivery. Furthermore, petitioner did admit receiving FS renewal notices and other notices at the same mailing address. Petitioner was not credible that neither he nor his wife received the FS overpayment notices or that he had not received his FS tax intercept notice. The petitioner filed his FS tax intercept appeal on December 8, 2014, which was significantly more than 30 days after the date of the September 12, 2014 tax intercept notice that was mailed to him. Therefore, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly imposed a September 12, 2014 FS tax intercept against the petitioner's taxes, as his appeal is untimely.

However, even if the petitioner's appeal had been timely, 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)

In the instant case, petitioner was unable to refute that he and/or his wife received the September 11, 2013 FS overpayment notices regarding the FS overpayment totaling \$8,133, and that he failed to file any appeal with DHA regarding those FS overpayment notices. See Findings of Fact #3 above.

During the January 6, 2015 hearing, petitioner appeared to also be questioning why the FS overpayment was seeking recovery from his wife and daughter, when he was the FS casehead during the period of September 1, 2011 to February 28, 2013. The food stamp regulations permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household.** Based upon the evidence in the hearing record, the petitioner's wife and daughter were adult member of petitioner's FS household which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

Establishing claims against households. **All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against...any household which contains an adult member of another household that received more food stamp benefits than it was entitled to receive.**

(Emphasis added).

As a result, the petitioner's wife and daughter are jointly and severally liable along with the petitioner for the FS tax intercept. The petitioner was unable to refute the calculation of the FS original overpayment amount of \$8,133, and did not dispute that neither he nor his wife had filed a timely appeal of the FS overpayment notices. In addition, there have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate.

As noted in Findings of Fact #2 and #3 above, the petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but petitioner failed to file any timely appeal to DHA. There have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits 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

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed a September 12, 2014 FS tax intercept against the petitioner's taxes, as the petitioner's appeal is untimely.
2. The Department may continue to certify the remaining FS overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund.

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 4th day of February, 2015

\sGary M. Wolkstein
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.

Milwaukee Enrollment Services
Public Assistance Collection Unit