



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FTI/162585

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 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 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a notice of state tax intercept to the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. Petitioner resided with his mother at Redact ct Red...t, until approximately the middle of 2013.
3. Petitioner provided the respondent with his new address in approximately the middle of 2013.

4. In September of 2013, the respondent sent petitioner an About Your Benefits letter at the petitioner's new (and current) address: [Redact].
5. Two pages of an ACCESS document reference health care benefits, a date of December 24, 2013, and petitioner's prior [Redact] address.
6. A FoodShare overpayment notice was sent to petitioner at [Redact], [Redact], [Redact], [Redact], [Redact], on May 21, 2014.
7. A FoodShare overpayment Repayment Agreement was sent to petitioner at [Redact], [Redact], [Redact], on June 3, 2014.
8. Dunning notices were sent to petitioner at [Redact], [Redact], [Redact], on July 2, 2014, August 4, 2014, and September 3, 2014.
9. A tax intercept notice was sent to petitioner at [Redact], [Redact], [Redact], on October 17, 2014.

DISCUSSION

Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FoodShare, and/or Medical Assistance payments previously made incorrectly.

The Department of Children and Families – Public Assistance Collections Unit must notify the person 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 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 use tax intercept, the person must have **received** three or more dunning notices. FoodShare Handbook § 7.3.2.10 (emphasis added).

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 received three dunning notices, s/he is subject to both tax intercept and monthly repayment. FoodShare Handbook § 7.3.2.12.

In this case, the Petitioner did not appeal the underlying FS overissuance. Petitioner contested ever receiving notice of the overpayment or tax intercept, as the notices were all sent to his former address at [Redact], [Redact], [Redact]. Petitioner credibly testified that his mother still resides at that address, but stated that he no longer communicates with this mother. A September 18, 2013, notice sent to petitioner's correct address ([Redact]), which entirely corroborates his testimony that he had provided the respondent with his address change in mid-2013.

Petitioner contacted the respondent on November 24, 2014, and at that time, he claims, he was first notified of the overpayment and tax intercept. Petitioner testified that he wanted to set up a repayment plan, but was informed that the tax intercept would not be rescinded. The most confusing part of this case is the fact that the respondent sent a notice to petitioner's correct address in September of 2013, but then all overpayment and tax intercept notices reverted back to his old address.

Because the respondent has not established that petitioner received the three dunning notices or even the notice of tax intercept, the agency did not properly issue a tax intercept notice to the Petitioner.

CONCLUSIONS OF LAW

1. The respondent did not properly issue a tax intercept notice to the Petitioner.
2. The respondent did not properly issue a FoodShare overpayment notice or repayment agreement to petitioner.

THEREFORE, it is

ORDERED

That the agency shall take all administrative steps necessary to rescind the tax intercept notice issued to the Petitioner on October 17, 2014, and shall cease any action to intercept Petitioner's taxes related to the October 17, 2014, notice. The respondent shall issue a new FoodShare overpayment notice and a new FoodShare repayment agreement to the petitioner at his current address: Redact
[REDACTED]. These actions shall be completed within 10 days of the date of this decision.

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 29th day of January, 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 January 29, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit