



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/162693

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 06, 2015, at Chilton, Wisconsin.

The issue for determination is whether the respondent correctly instituted a tax intercept.

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: Lynn Brenner

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Peter McCombs

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Calumet County.
2. The Department of Health Services (DHS) sent a December 12, 2013, written Medicaid/Badgercare Overpayment Notice concerning an MA overpayment during the period of March, 2013, through July, 2013, in the amount of \$2,540.46, due to failure to timely report an

increase in household income. See Exhibit 3. Petitioner appealed that overpayment in DHA case no. MOP/155024, but withdrew her appeal prior to hearing.

3. On January 4, 2013, the respondent sent petitioner a repayment agreement; dunning notices were sent June 3, 2014, July 2, 2014, and August 4, 2014. See, Exhibits 2 and 3.
4. The Department's Public Assistance Collection Unit (PACU) sent a November 13, 2014, notice entitled *Notice of Administrative Action*; enclosed with the notice was an *Order to Compel Payment of Liability* and an *Affidavit of Collector*; all of this concerned the MA overpayment claims established against petitioner in the total amount of \$2,540.46, between March, 2013, and July, 2013.
5. Petitioner and respondent have not entered into a repayment agreement. Petitioner has offered repayment terms, but the respondent has not accepted petitioner's proposal.
6. On August 15, 2014, the agency sent the Petitioner a notice of State tax intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt."
7. The Petitioner filed a request for fair hearing that was postmarked November 25, 2014. Exhibit 1.

DISCUSSION

The federal regulations concerning FoodShare overpayments require the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

One of the ways the agency may recover an overpayment is by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. 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 § 49.85(3). The Department has issued the required refund interception notice here.

The Petitioner filed an appeal because she does not think that the respondent should be allowed to intercept her taxes when she is willing to enter into a repayment agreement. She has offered to resolve this matter, but the respondent has been unwilling to accept the repayment terms that petitioner has offered.

An Administrative Law Judge can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if a hearing request is untimely. With regard to the State Tax Intercept, Petitioner's appeal is untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11. In this case, the date of the tax intercept notice was August 15, 2014. As such, petitioner needed to file her appeal by September 14, 2014. Petitioner did not file his appeal until November 25, 2014. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal of the state tax intercept.

CONCLUSIONS OF LAW

Petitioner's appeal of the State Tax Intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

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

\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 February 4, 2015.

Calumet County Department of Human Services
Public Assistance Collection Unit