



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/163308

PRELIMINARY RECITALS

Pursuant to a petition filed January 20, 2015, 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 February 19, 2015, at Madison, Wisconsin.

The issue for determination is whether the agency properly implemented 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: Kristine DeBlare
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of [redacted]. The petitioner was previously a resident of Milwaukee County.
2. On February 17, 2014 the agency mailed the petitioner a notice of FoodShare (FS) overpayment stating that his household had been overpaid \$4,367.00 in FS benefits from October 7, 2013

through February 28, 2014. After discovering this overpayment, the agency closed the FS account.

3. On March 4, 2014 the agency mailed the petitioner a repayment agreement.
4. On June 3, 2014 the agency mailed the petitioner another repayment agreement.
5. On July 2, 2014, August 4, 2014, and September 3, 2014 the agency mailed the petitioner dunning notices reminding her that he still needed to repay \$4,367.00 overpayment.
6. On December 16, 2014 the petitioner made a payment in the amount of \$583.38. The agency properly credited the petitioner's account with this payment.
7. On January 16, 2015 the agency sent Petitioner a notice, indicating that it may intercept any tax refund to which she might be entitled to satisfy the \$3,783.62 overpayment balance.
8. The petitioner filed a request for fair hearing with the Division of Hearings and Appeals on or about January 20, 2015.
9. The petitioner did not have a repayment agreement in place when the agency instituted this tax intercept.

### DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(2)*.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

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 and the debt must be:

1. Valid and legally enforceable.
2. State: All error types  
Federal: All error types.
3. State: At least \$20;  
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;  
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

#### *FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

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 FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services 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*

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 petitioner's appeal is timely with regard to the tax intercept issue.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

In this case the petitioner sought to challenge the underlining overpayment. This is not allowed in a hearing on a tax intercept. It is important to note that the petitioner timely submitted a request for fair hearing for the underlining overpayment, but then chose to abandon that appeal. The petitioner states that she never received anything from Hearings and Appeals. I do not find this testimony credible. The notice of hearing and decision were both sent to the petitioner, and therefore I must presume that she received both the notice and decision. If the petitioner seeks to challenge the overpayment, the proper procedure would be to ask for a rehearing. The petitioner cannot challenge the underlining overpayment on a hearing regarding the tax intercept.

With regard to the tax intercept, the agency properly implemented it in this case. The agency sent the petitioner a notice of overpayment, two repayment agreements, three dunning notice, and a notice of tax intercept. The petitioner disputes receiving those notices, but I do not find this testimony credible. These notices were mailed to the proper address, thus, I have to presume that the petitioner received the notices. The agency also properly credited the petitioner's December 2014 payment.

### CONCLUSIONS OF LAW

The agency properly implemented a tax intercept.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 this action arose (Milwaukee County). 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 Milwaukee,  
Wisconsin, this 25th day of February, 2015

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\sCorinne Balter  
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 25, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit