



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
Redact
[Redacted]

DECISION

FTI/163353

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waupaca County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 19, 2015. At petitioner's request Hearings scheduled for April 16, 2015, March 19, 2015, and February 19, 2015 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: MTI-163354; and, LVO-163335.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following 2 FS overpayment Claims in the total amount of \$4,406.45 spanning the time period November 1, 2009 to August 31, 2010 and February 1, 2011:

- Claim # [Redacted]; November 1, 2009 to August 31, 2010; \$4,400.00; and,
Claim # [Redacted]; February 1, 2011; \$6.45.

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: [Redacted], ES Coordinator
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Portage County, Wisconsin.
2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following 2 FS overpayment Claims in the total amount of \$4,406.45 spanning the time period November 1, 2009 to August 31, 2010 and February 1, 2011:
 Claim # Redact; November 1, 2009 to August 31, 2010; \$4,400.00; and,
 Claim # Redact; February 1, 2011; \$6.45.
3. In regard to the overpayment identified in *Finding of Fact #2*, above, petitioner received a written FS overpayment notice entitled *Notification of FS Overissuance* dated September 1, 2010; the FS overpayment notice explained the overpayment and how petitioner could file an appeal, including the 90-day time limit for filing an appeal.
4. Petitioner never requested a Hearing in response to the September 1, 2010 FS overpayment notice.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

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) (2013-14).

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) (2013-14).

Petitioner received a written FS overpayment notice which explained the overpayment and how petitioner could file an appeal -- but never requested a Hearing. Thus, petitioner had a prior opportunity to contest

the overpayment listed in *Finding of Fact #2*, above. It follows that petitioner may not now contest the merits of the FS overpayment.

Petitioner testified that the address to which the September 1, 2010 FS overpayment notice was sent is his ex-girlfriend's address, that he thinks he lived there from 2008 to about the middle of 2010 at which time he moved out, and that they were not on speaking terms when he moved out. He testified that his mail was thrown out or sent back. He testified that they "patched things up" and he lived with his ex-girlfriend again from about December 2011 to about January or February 2012. Based on the other evidence in the record of this matter, however, it must be concluded that petitioner received the FS overpayment notice in a timely manner. It is not credible that he did not.

First, petitioner himself acknowledges that he is not certain of what dates he lived with his ex-girlfriend.

Second, from September 1, 2010 to December 2, 2010 twenty-one different notices were mailed to petitioner at his ex-girlfriend's address and none were returned to the County. A single notice dated January 4, 2011 that was sent to petitioner at his ex-girlfriend's address was returned to the County on January 10, 2011. This only gives added significance to the fact that none of the prior 21 notices were returned.

Third, petitioner appeared at a Hearing on August 30, 2010 at which he used his ex-girlfriend's address. DHA Case No. FOP-68/113018 (Wis. Div. Hearings & Appeals August 30, 2010) (DHS); and, DHA Case No. MBC-68/113043 (Wis. Div. Hearings & Appeals October 12, 2010) (DHS). This is just 2 days before the date of the overpayment notice.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the 2 FS overpayment Claims identified in *Finding of Fact #2*, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$4,406.45 and that amount may be applied against the 2 FS overpayment Claims identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED; DHS may certify the amount of \$4,406.45 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the 2 FS overpayment Claims identified in *Finding of Fact #2*, above.

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 22nd day of May, 2015

\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 May 22, 2015.

Waupaca County Department of Social Services
Public Assistance Collection Unit