



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/163545

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 17, 2015, at Madison, Wisconsin.

The issue for determination is whether the tax intercept for \$3,088 was correctly issued on 1/16/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Megan Thurston

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.
2. Petitioner's mother received FS from 4/1/13 to 1/31/14. The mother included petitioner on her case and received benefits on his behalf. Petitioner did not live with the mother at any time during the overpayment period or following.

3. Various overpayment and Dunning notices were sent to petitioner at his mother's addresses after the overpayment was determined. Petitioner did not receive these notices as he lived elsewhere.
4. On 1/16/2015 the Department sent a tax intercept notice to petitioner at his mother's address. Petitioner received this notice from his mother.
5. Petitioner filed a timely appeal.

DISCUSSION

Wis. Stat., §49.85(2)(a), 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, 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

The Department's policy concerning tax intercepts is set out in the FoodShare Wisconsin Handbook, App. § 7.3.2.10. A tax intercept is used if a person becomes delinquent in repaying an overpayment. Before utilizing the intercept, the agency must send three dunning notices that offer the person the opportunity to agree to a repayment schedule. The Handbook specifies that these notices must be "received." *See FS Handbook* at § 7.3.2.10 ("To use tax intercept, the person must have received three or more dunning notices..."). In this case, the notices were all sent to the mother's addresses. Petitioner was living somewhere else. There is no evidence that petitioner received the Dunning notices and, thus, the tax intercept was issued incorrectly.

The record suggests that petitioner never received notice of the debt and never had an opportunity to defend against the overpayment action when the OP notice was sent (with appeal rights) on 8/17/14. Thus, I will examine the basis for the overpayment as such an examination is not untimely given failure to receive notice of the debt or the appeal rights.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added). Those regulations also provide, in relevant part, as follows:

(a) 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 that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult a person who is 18 years old or older and a member of the household at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2.

According to the FS Handbook, a person must live in the same residence to be part of the household:

3.3.1.1 HUG (Households, Units, Groups)

To determine who is nonfinancially eligible for FoodShare, you must start with all household members.

H - Households:

Households consist of **all persons living in or temporarily absent from the same residence** . It is important to enter all household members into CARES to ensure that the correct eligibility determination is made.

The fact that petitioner was on the FS case and being used as part of a possible fraud perpetrated by his mother does not make him liable. The fact that he was named in the case does not make him a member of the household under the FS definition of "household." Had the agency presented any evidence that petitioner actually lived with his mother during any of the overpayment period this would be a different case. But, the evidence only shows that petitioner lived elsewhere for all pertinent periods.

CONCLUSIONS OF LAW

1. Prior to having his tax refunds intercepted to recover an FS overpayment, petitioner did not have an opportunity for a hearing on the merits of the overpayment because the agency did not notify him of the claim.
2. Petitioner did not live in the household with his mother during any of the overpayment period and he is not liable for an overpayment to his mother.
3. Any tax refunds intercepted by the Department from petitioner with regard to the overpayment period of 4/1/13 to 1/31/14 must be refunded to him.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to remove petitioner as a liable party for claim number [REDACTED] and to take action to effectuate a refund of any sums intercepted from his tax refunds. The agency shall take the action within 10 days 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 24th day of April, 2015

\sJohn P. Tedesco
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 April 24, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit