



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FTI/163547

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 Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the tax intercept was issued in error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted name

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. The agency determined a FS overissuance in the amount of \$4,649 and sent notice to petitioner on 4/15/13. The notice included the right to appeal the overissuance. No appeal was requested.
3. Repayment agreement was sent to petitioner on 10/2/14.

4. The agency began recouping the overissuance from continuing FS allotments. Petitioner was in agreement with this recoupment. FS closed in September 2014.
5. The agency then sent Dunning notices reminding petitioner of the overissuance liability. The notices were sent on 10/2/14, 11/4/14, and 12/2/14.
6. A tax intercept notice was sent on 1/16/15.
7. Petitioner filed a timely appeal from the tax intercept notice.

DISCUSSION

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 FoodShare and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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)

The petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but failed to file any timely appeal to DHA. That was the time to argue that the liability determination of the overissuance was not correct. I will not hear arguments on the merits of the overpayment now, nearly two years later.

Program rules permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household.** Based upon the evidence in the hearing record, the petitioner was an adult member of the FS household of Jeanette Schuler which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

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 which contains an adult member of another household that received more food stamp benefits than it was entitled to receive.

(Emphasis added). The petitioner was an adult in the household at the time of the overissuance. As a result, the petitioner is liable for the FS tax intercept.

I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly

recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (“...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive...”), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

The issuance of the tax intercept notice, and the related effort to collect, was not in error.

THEREFORE, it is

ORDERED

That this appeal 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 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 11th day of March, 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 March 11, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit