



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted name and address information

DECISION

FTI/163561

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on February 19, 2015.

The issue for determination is whether the agency properly issued a notice of state tax intercept to the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name and address

Respondent:

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

By: Redacted signature

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Waupaca County.
2. On March 29, 2011, the respondent established two overpayment claims against the petitioner: Claim no. Redacted in the amount of \$749.00, and Claim no. Redacted in the amount of 292.00. Exhibit 4.

3. Petitioner executed a repayment agreement to repay the FS overpayment, but later missed payments required by said agreement. See, Exhibits 4-4 – 4-6.
4. As of the date of hearing in this matter, Claim no. [Redact] was paid in full, and the respondent contended that Claim no. [Redact] had an unpaid balance of \$337.77. See, Exhibit 4. Post-hearing the respondent noted that the unpaid balance to \$321.77, due to expunged benefits being applied to the outstanding balance. See, Exhibit 5.
5. Pursuant to a Wisconsin Cares website printout entitled “Claims for an Individual,” petitioner’s only remaining FS overpayment claim balances, as of the date of this decision, are as follows:

Claim no.	[Redact]	\$144.00;
Claim no.	[Redact]	\$192.00;
Claim no.	[Redact]	\$ 32.00.

Exhibit 6.

6. The respondent recouped no monies on the outstanding FS overpayments between September, 2013, and January, 2014, due to a stay issued pursuant to petitioner’s bankruptcy filing.
7. A tax intercept notice was sent to petitioner on January 16, 2015. Exhibit 2.

DISCUSSION

Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FoodShare, and/or Medical Assistance payments previously made incorrectly.

The Department of Children and Families – Public Assistance Collections Unit must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from 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 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. *FoodShare Handbook* § 7.3.2.10. If a person has received three dunning notices, s/he is subject to both tax intercept and monthly repayment. *FoodShare Handbook* § 7.3.2.12.

In this case, the Petitioner did not appeal the underlying FS overissuance. Petitioner contested the balance of the overpayments, asserting that the respondent had continued to issue FS benefits to her, despite her request to be removed from the FS program. The respondent concedes the agency error in this regard, and testified that as of February, 2015, all FS issued, but not accessed by petitioner, had been expunged and applied to the outstanding FS overpayment balance on Claim no. [Redact]. See also, Exhibit 5. Petitioner asserted that she made a payment of \$100.00 on Claim no. [Redact] (\$160.00), but that payment is not reflected anywhere. The petitioner did not supply anything further to substantiate this allegation, and I note that the petitioner has other overpayments concerning BadgerCare and Wisconsin

Works, none of which have current outstanding balances, but I am unable to rule out the application of that payment to one of those overpayment balances.

The petitioner also raised an issue regarding FS overpayment Claim nos. Redact (\$192.00) and Redact (\$32.00). Petitioner asserts that she never received these FS benefits, and the respondent concedes that these overpayments resulted from agency error. While the respondent has testified that the improperly allotted benefits were expunged by the respondent, upon being expunged they were applied to outstanding FS overpayment claims. In essence, this has resulted in a “push” whereby many of the payments recouped were themselves overpayments. And while this has not increased petitioner’s FS overpayments, it has resulted in relative stasis with regard to the overpayment totals.

Based on the entirety of the record before me, the petitioner has not established any error on the part of the respondent in determining the amount of petitioner’s FS overpayment balances.

CONCLUSIONS OF LAW

The respondent properly issued a tax intercept notice to the Petitioner.

THEREFORE, it is

ORDERED

That petitioner’s appeal is hereby 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 20th day of March, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 20, 2015.

Outagamie County Department of Human Services
Public Assistance Collection Unit