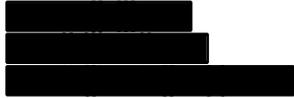




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/163594

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 03, 2015, at Racine, Wisconsin.

NOTE: The record was held open to allow the agency to submit a Claim Recoupment History print out and to obtain records from the [redacted], confirming the Petitioner's incarceration. The Claim Recoupment History has been marked as Exhibit 4 and entered into the record. On March 4, 2015, the [redacted] submitted, via e-mail, documentation of Petitioner's incarceration. It has bene marked as Exhibit 3 and entered into the record.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly 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: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The Petitioner was incarcerated at the [redacted] in the state of [redacted] from November 4, 2013 to December 16, 2013. (Exhibit 3)

2. On November 21, 2013, an ACCESS application was submitted using the Petitioner's information to request FoodShare benefits. That application indicated that the Petitioner was not receiving food stamps / SNAP benefits in any other state. (Exhibit 2, attachment A)
3. The application was completed by Petitioner's then girlfriend, JS. Petitioner did not give JS permission to apply for FoodShare benefits. (Testimony of Petitioner)
4. Upon his release from jail in December 2013, the Petitioner came to Wisconsin. It was at this time JS informed him that she had applied for FoodShare benefits on his behalf. (Testimony of Petitioner)
5. Petitioner received and used the FoodShare benefits. (Testimony of Petitioner)
6. On January 15, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that he had been overpaid FoodShare benefits in the amount of \$245.00 for the period of November 22, 2013 and December 31, 2013. (Exhibit 2, attachment D)
7. On February 4, 2014, the agency sent the Petitioner a repayment agreement. (Exhibit 2, attachment E)
8. The agency recouped benefits from the Petitioner on February 14, 2014, March 18, 2014, April 17, 2014, and May 16, 2014. (Exhibit 4)
9. The agency sent the Petitioner a dunning notice (reminder about the debt) on July 2, 2014. (Exhibit 2, attachment F)
10. The agency recouped benefits from the Petitioner on July 17, 2014, August 18, 2014 and September 16, 2014. (Exhibit 4)
11. On November 5, 2014 and December 2, 2014, the agency sent Petitioner two more dunning notices. (Exhibit 2, attachments G and H)
12. All notices were sent to the Petitioner at his correct mailing address which was JS's parent's address. (Testimony of Petitioner)
13. The Petitioner moved to [REDACTED] in January 2015 and notified the agency. (Testimony of Petitioner; Exhibit 2, attachment I)
14. On January 16, 2015, the Public Assistance Collections Unit sent the Petitioner a notice of tax intercept, advising him that he had a balance of \$118.00 due and that his state tax refund would be intercepted to satisfy the debt. (Exhibit 2, attachment I)
15. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 30, 2015. (Exhibit 1)

DISCUSSION

There are a number of steps that an agency must take in order to properly implement a tax intercept.

- 1) 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. The agency did this; it sent the Petitioner an overpayment notice on January 15, 2014 and it sent him a repayment agreement on February 4, 2013.
- 2) If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.* The agency did this on January 17, 2014, July 2, 2014, November 2, 2014 and December 2, 2014.
- 3) To use a tax intercept, the person must have received three or more dunning notices. *FoodShare Wisconsin Handbook* §7.3.2.10 As discussed above, the agency sent the Petitioner three dunning notices.
- 4) To use a state tax intercept the debt must be:
 1. Valid and legally enforceable.

2. At least \$20;
3. State: At least 30 days from notification of Overissuance;
4. Free from any current appeals.
5. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

There is nothing in the record to suggest the debt is not valid or legally enforceable; it is over \$20.00; the tax intercept notice was issued more than 30 days after the agency issued the overpayment notice; there do not appear to be any appeals of the underlying overpayment and there is no indication that the Petitioner filed for bankruptcy.

- 5) 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 agency sent the Petitioner a notice of tax intercept on January 16, 2015.

Based upon the foregoing, it is found that the agency took the proper steps to implement a tax intercept.

At the hearing, the Petitioner did not dispute the fact that an overpayment of benefits occurred nor did he dispute the agency's calculation of the overpayment.

However, the Petitioner argued that he should not be held liable for the FoodShare overpayment, because JS applied for the FoodShare benefits on his behalf, without his permission. However, the fact remains that the Petitioner still received and used FoodShare benefits to which he was not entitled. Per state and federal regulations, he must pay them back.

The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, regardless of fault, even if the overpayment was caused by agency error. 7 *C.F.R. §273.18(a)(2)*.

Further, all adult members of the household are responsible for paying an overpayment claim:

All adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FoodShare benefits. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household.

Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full.

FSH §7.3.1.2; see also 7 CFR §273.18(a)(4)(i)

Consequently, the law requires the Petitioner to be held liable for the overpayment.

Finally, the Petitioner's argument is an equitable one, meaning it is based upon what the Petitioner thinks is fair, not upon what the law requires. However, an administrative law judge does not possess any equitable powers but must apply the law as it is written.¹ As such, I have no authority to relieve the Petitioner of liability for the overpayment.

¹ See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency correctly 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.

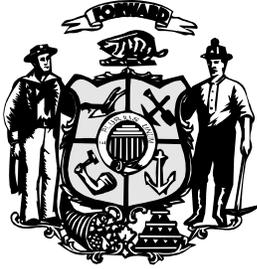
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where 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 Milwaukee,
Wisconsin, this 5th day of March, 2015.

\sMayumi M. Ishii
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 5, 2015.

Racine County Department of Human Services
Public Assistance Collection Unit