



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

FTI/163683

PRELIMINARY RECITALS

Pursuant to a petition filed February 4, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit ["PACU"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 19, 2015.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS in the total amount of \$5,138.00 for the time period February 1, 2011 to March 31, 2012 and whether petitioner's Wisconsin State Income Tax refund may be intercepted as a way to obtain repayment of those Claims:

Claim Number Redact; February 1, 2011 to January 31, 2012; \$4,404.00; and,

Claim Number Redact; February 1, 2012 to March 31, 2012; \$734.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

BY: Redact, IRS/PARIS Agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is currently a resident of Indiana.
2. The following 2 Claims were established against petitioner for overpayments of FS in the total amount of \$5,138.00 for the time period February 1, 2011 to March 31, 2012:
 Claim Number [Redact]; February 1, 2011 to January 31, 2012; \$4,404.00; and,
 Claim Number [Redact]; February 1, 2012 to March 31, 2012; \$734.00.
3. Petitioner was sent a computer-generated *Notification of FS Overissuance* notice dated February 1, 2013 relating to the FS overpayments in *Findings of Fact #2*, above; she never received that notice because an address in [Redact], Georgia was used and petitioner no longer lived at that address.
4. Petitioner was sent written notice from State of Wisconsin, dated June 14, 2013 and entitled *Important Notice About Your State Tax Refund and Credits*; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$5,138.00 to repay the FS overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing; petitioner never received that notice because it was mailed to an address in [Redact], Georgia and petitioner no longer lived at that address.
5. The FS overpayments in *Findings of Fact #2*, above, resulted from the fact that petitioner received Wisconsin FS when she was no longer a resident of Wisconsin; she left Wisconsin in January 2011 and moved to Georgia; she left Georgia in January 2012 and moved to Indiana.

DISCUSSION

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

A tax intercept notice must be mailed to the last-known address of the person from whom the State of Wisconsin intends to recovery the overpayment. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (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).

Frist, PACU argues that petitioner's request for a Hearing on the tax intercept was not made timely and must, therefore, be dismissed. An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2013-14); See also, Wis.

Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated June 14, 2013. Petitioner's request for a Hearing was not made until February 2015. This is outside of the allowed 30 days. However, as noted above, petitioner never received that June 14, 2013 tax intercept notice because it was mailed to an address in **Redact**, Georgia and petitioner no longer lived at that address. Petitioner's testimony in this regard is credible and is consistent with other evidenced in the record of this matter. Therefore, her request for a Hearing on the tax intercept will not be dismissed as untimely.

The tax intercept 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).

As noted above, petitioner also never received the February 1, 2013 *Notification of FS Overissuance* because it was mailed to an address in **Redact**, Georgia and petitioner no longer lived at that address. Petitioner's testimony in this regard is credible and is consistent with other evidenced in the record of this matter. Therefore, petitioner never had a prior opportunity for a Hearing. It follows that the above quoted statutory language does not limit the scope of the issues to be considered here.

A person must reside in Wisconsin in order to be eligible for Wisconsin FS. 7 C.F.R. § 273.3(a) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 3.2.1. Petitioner did not reside Wisconsin during the time period of the overpayments. Petitioner admits this. However, petitioner argues that the overpayments were not her fault because she states that she notified Wisconsin in January 2011 that her FS case should closed. Nevertheless, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, FWH 7.3.1.1 & 7.3.2.1

CONCLUSIONS OF LAW

For the reasons discussed above, the following 2 Claims may be established against petitioner for overpayments of FS in the total amount of \$5,138.00 for the time period February 1, 2011 to March 31, 2012 and petitioner's Wisconsin State Income Tax refund may be intercepted as a way to obtain repayment of those Claims:

Claim Number **Redact**; February 1, 2011 to January 31, 2012; \$4,404.00; and,

Claim Number **Redact**; February 1, 2012 to March 31, 2012; \$734.00.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED and DHS may certify the amount of \$5,138.00 to the Wisconsin Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the 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 19th day of March, 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 March 19, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit