



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FTI/163780

PRELIMINARY RECITALS

Pursuant to a petition filed February 9, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 19, 2015, at Medford, Wisconsin.

The issue for determination is whether the department correctly seeks to intercept the petitioner's federal income tax return to recover an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted]

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Taylor County.
2. The department notified the petitioner on July 19, 2013, that it would seek to recover \$2,535 in FoodShare benefits he received from July 25, 2012, through June 30, 2013. That notice gave him his appeal rights.

3. The department sent the petitioner a repayment agreement on August 2, 2013. It then sent him dunning notices on September 4, October 2, and November 4, 2013.
4. The department notified the petitioner on December 13, 2013, that it intended to intercept \$2,535 from any refund of his federal income taxes. That notice informed him that he had 30 days to appeal.
5. The only appeal the petitioner filed concerning any of these actions occurred on February 9, 2015.

DISCUSSION

State FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). The department notified the petitioner on July 19, 2013, that it would seek to recover \$2,535 in FoodShare benefits he received from July 25, 2012, through June 30, 2013. That notice informed him that he had 90 days to appeal, which accurately reflected the time allowed by Wis. Admin. Code, § HA 3.05(3)(a). It then sent him a repayment agreement on August 2, 2013, and dunning notices on September 4, October 2, and November 4, 2013. He didn’t respond to any of these within 90 days. An agency may recover an overpayment by intercepting a person’s income tax refund. Wis. Stat. § 49.85. The department notified the petitioner on December 13, 2013, that it intended to intercept his federal income tax refund to recover the \$2,535 overpayment. That notice informed him that he had 30 days to appeal, which accurately reflected Wis. Stat. § 49.85(3)(b)4. He didn’t respond within 30 days.

The petitioner filed his only appeal of any of these actions on February 9, 2015, or almost 14 months after the department sent the last notice to him. He seeks to challenge not only the intercept action but also the underlying overpayment. Even if he had appealed the tax intercept on time, I would not allow him to challenge the underlying overpayment because the Division of Hearings and Appeals “may limit the scope of the hearing to exclude issues that...could have been presented at a prior opportunity for hearing.” Wis. Stat. § 49.85(4)(b). But he didn’t appeal the intercept or any other action on time, so he has no grounds whatsoever to challenge any of the FoodShare actions taken against him. Therefore, the department may intercept his income tax refund.

CONCLUSIONS OF LAW

The petitioner’s appeal is untimely both in relation to the overpayment of his FoodShare benefits and to the department’s decision to intercept his federal income tax refund to recover that overpayment.

THEREFORE, it is

ORDERED

The petitioner's 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 24th day of March, 2015

\sMichael D. O'Brien
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 24, 2015.

Polk County Department of Social Services
Public Assistance Collection Unit