



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/163860

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 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 April 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly instituted 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: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On January 18, 2008, the agency sent the Petitioner Notifications of FoodShare Overissuance, Claim Numbers [Redacted] and [Redacted], indicating his household was overissued FoodShare benefits in the amount of \$1,540.00 for the periods of August 12, 2003 to February 29, 2004, and August 1, 2004 to June 30, 2005. (Exhibit 7).

3. The agency sent Petitioner a repayment agreement on February 4, 2008. (Exhibit 5)
4. The agency sent the Petitioner dunning notices (reminders about the debt) on March 4, 2008, April 2, 2008 and May 2, 2008. (Exhibit 6)
5. On June 13, 2008, the agency sent the Petitioner a notice of State tax intercept, advising him that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit 7)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 10, 2015. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal because he does not think he should be held liable for the overpayment underlying the tax intercept, because he lived with his wife and child only sporadically at the time of the FS overpayment, and he never received notice of the overpayment. Petitioner's wife was the head of the FS household, and all notices were sent to the PO Box address that petitioner's wife had provided.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error..." 7 C.F.R. § 273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code, §HA 3.05(3)(b). The record establishes that the household was provided the requisite notice, and therefore petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's February 10, 2015 appeal was filed well beyond 90-days from the date of the January 18, 2008, overpayment notice. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

Notwithstanding the foregoing, I note that the Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;

2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

Spouses who live together must be included in the same food unit, even if they do not purchase and prepare meals together. *7 C.F.R. §273.1(b)(1); See also FSH §3.3.1.3.*

“All adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred...” *FSH §7.3.1.2; see also 7 CFR §273.11(a)(4)(i).*

The petitioner also questioned whether there was a time limit on the collection of FS overpayments; I am unaware of any time limits in recipient-error overpayment collections.

With regard to the State Tax Intercept, Petitioner’s appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the tax intercept notice was June 13, 2008. As such, Petitioner needed to file his appeal by July 14, 2008. Petitioner did not file his appeal until February 10, 2015, almost 7 years after the household was sent the tax intercept notice. As such, his appeal is untimely and there is no jurisdiction to hear the merits of his appeal of the state tax intercept.

CONCLUSIONS OF LAW

1. Petitioner’s appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner’s appeal of the State Tax Intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

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 1st day of May, 2015.

\sPeter McCombs
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 May 1, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit