



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/163934

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2015, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare (FS) overpayment, a hearing was held on March 5, 2015, by telephone.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an FS overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS in 2012 and 2013. By a notice dated November 4, 2013, the agency informed petitioner that she was overpaid \$1,747 in FS from August 1, 2012 through July 31, 2013, claim no. [REDACTED]. Petitioner did not appeal. She agreed to pay \$20 per month on the claim.

3. Petitioner made the \$20 payments in December, 2013, January, and February, 2014. She made no payment in March, 2014. That led to the agency sending her a “dunning” notice on April 2, 2014.
4. Petitioner made payments again in April, May, and June, 2014, but she missed July. That led to a second dunning notice from the agency on August, 4, 2014. A third dunning notice was sent September 3, 2014 after petitioner missed the August payment. Petitioner then paid \$60 in mid-September. She followed up by making payments in October, November, and December, but she missed January, 2015.
5. By a notice dated February 13, 2015 the PACU notified petitioner that it intended to intercept her state tax refund to recover the \$1,453 unpaid portion of the overpayment.

### DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. 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)(a).

If a person signs a repayment agreement the agency will not utilize a tax intercept. FS Handbook, Appendix 7.3.2.12. However, if an agreed payment is missed, the agency will send a dunning notice. Once three dunning notices are sent, a missed payment will be considered delinquent, and the agency will utilize the tax intercept. Handbook, App. 7.3.2.11.

In this case petitioner has been attempting to keep up with the repayment agreement. However, she missed three payments in 2014 leading to three dunning notices. Then when she missed the January, 2015 payment the agency’s tax intercept process began.

At this point I have no authority to stop the tax intercept. Under the policy the PACU will issue the tax intercept notice after three dunning notices and then a further delinquency. At this point only the PACU can withdraw the intercept.

### CONCLUSIONS OF LAW

The PACU may utilize a tax intercept to recover an FS overpayment because petitioner’s repayments went delinquent after three dunning notices were sent.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same 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 16th day of March, 2015

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\sBrian C. Schneider  
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 16, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit