



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/163935

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Burnett County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2015, at Siren, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Aaron Borreson

Burnett County Department of Social Services  
7410 County Road K, #280  
Siren, WI 54872

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Burnett County.
2. The department notified the petitioner on March 15, 2013, that it would intercept \$942 from "any tax refunds or credits due you now or in the future" to recover an overpayment of FoodShare. That notice informed her that she had 30 days to appeal if she disagreed with the decision.

3. The department had previously sent a repayment agreement to the petitioner on November 2, 2012, to recover the \$942 overpayment of FoodShare. It also sent dunning notices to her on January 3, 2013, February 4, 2013, and March 15, 2013.
4. The petitioner paid \$10 per month toward her overpayment from June 2014 through January 2015. She also made payments of \$25 on October 1, 2013, \$12 on November 1, 2013, \$10 per month from December 2013 through March 2014, and \$18 a month in April and May 2014. These payments were all recovered from her FoodShare allotment after she reopened her benefits in September 2013.
5. The petitioner's FoodShare case temporarily closed in December 2013 when she failed to renew her benefits on time. It reopened without her losing any benefits.
6. The department intercepted the petitioner's 2014 income tax refund.
7. The petitioner filed her only appeal on February 13, 2015.

### DISCUSSION

I note initially that the petitioner left a message on my telephone on March 26, 2015, providing additional evidence to support her claim. When one side talks to the judge without the other side present it is called *ex parte communication*. It is unethical for a judge to have *ex parte* contact with a party about the merits of the case. Because of this, once I determined that the petitioner was trying to influence me, I stopped listening to the message and deleted it. If the petitioner wished to present additional evidence, she should have submitted the evidence in writing to the judge and provided a copy to the other side.

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). An agency may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amount it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. 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). Those wishing to challenge the decision to intercept a tax refund must do so within 30 days of when the agency notifies them of its intention. Wis. Stat. § 49.85(3)(a)2.

The petitioner had a \$942 overpayment of FoodShare. It is unclear exactly when it occurred, but the department sent her a repayment agreement on November 2, 2012, and dunning notices on January 3, 2013, February 4, 2013, and March 15, 2013. She did not respond to any of these. On March 15, 2013, it notified her that it intended to recover her FoodShare allotment. Again she did not respond. When her FoodShare case reopened in September 2013, the agency began taking a portion of her benefits to recover the overpayment. Because it was getting steady payments from her, it did not intercept her 2013 income tax refund.

In December 2014, she did not complete her renewal on time, and her case temporarily closed. Although she then completed the renewal in time to not lose any benefits, the agency intercepted her 2014 income tax refund. She contends that it should not have been able to do so because she had been making steady payments.

Although I understand her position, nothing in state or federal law prevents the department from using more than one means to recover an overpayment. Wis. Stat. § 49.85(5) states: "Certification of an amount under this section does not prohibit the department of health services or the department of children and families from attempting to recover or collect the amount through other legal means." *See also* 7 CFR § 273.18(e). Thus, although the department generally does not intercept the refund of anyone who is

making regular payments, once it gets the authority to intercept a refund, it retains the right to use it. The department obtained legal authority to intercept the petitioner's FoodShare benefits when she did not appeal its March 13, 2013, decision to do so within 30 days—her only appeal was filed on February 13, 2015. That authority continues to this day regardless of any decision the department made not to exercise that authority before 2015. Therefore, the department lawfully intercepted the petitioner's 2014 income tax return.

### CONCLUSIONS OF LAW

The agency correctly relied upon a 2013 notice to intercept the petitioner's 2014 income tax return.

**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 9th day of April, 2015

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\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 April 9, 2015.

Burnett County Department of Social Services  
Public Assistance Collection Unit