



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/164020

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 17, 2015, under Wis. Stat., §49.85(4), to review a decision by Public Assistance Collection Unit (PACU) to intercept petitioner's state income tax refund to recover a FoodShare (FS) overpayment, a hearing was held on April 1, 2015, by telephone. A hearing set for March 5, 2015 was rescheduled at the parties' request.

The issue for determination is whether the Department correctly intercepted 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: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
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. In 2012 petitioner was part of his mother's FS household. He turned age 19 in June, 2012.
3. On August 30, 2013, the agency sent petitioner and his mother notices informing them that the household was overpaid \$2,104 in FS from September 1 through December 31, 2012, claim no.

██████████. The notices were sent to petitioner's mother's address. Petitioner did not see the notice sent to him. No appeal was filed.

4. On September 4, 2013, the PACU sent a repayment agreement to petitioner. The agreement was sent to an address on ██████████ under a different case name and number. The case head in that case was petitioner's grandfather, who died in October, 2013. Three dunning notices were sent to petitioner thereafter, all to his grandfather's address.
5. On January 17, 2014, the PACU sent petitioner a notice that it intended to intercept his state tax refund to recover the overpayment. The notice was sent to petitioner's mother's address, the same address to which the original overpayment notice was sent.
6. Petitioner filed this appeal after his tax refund was intercepted.

### 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).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... 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.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

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. Admin. Code, §HA 3.05(3)(b).

The first issue is whether there was an overpayment. There was. Petitioner's mother was notified that she was overpaid FS due to failing to report an increase in income. She did not appeal the overpayment claim. Because petitioner was an adult in the FS household during the overpayment period, he is liable under the federal law cited above.

I did some research post-hearing. I found that petitioner was deleted from his mother's case in early 2013, after the overpayment period. He thus was on the case the entire overpayment period. However, by the time the overpayment notice was sent, petitioner no longer was on the case. He acknowledged during the hearing that he still received mail at his mother's address in 2013, but he says his mother never forwarded him the overpayment notice.

Petitioner did not live with his grandfather. It appears that he was on his grandfather's case when he was younger, and thus he was tied to his grandfather's case number. The repayment agreement and dunning notices were sent to the current address on his grandfather's case. It is unclear why the tax intercept notice was sent to petitioner's mother's address again.

The FS Handbook, Appendix 7.3.2.10, provides that the PACU can use a tax intercept after the person received three dunning notices with payment on the claim still being delinquent. There is some history of the use of the word "received." Typically the Division of Hearings and Appeals has found that if the dunning notices were sent to the correct address and not returned the intercept can be implemented even if the person claims that he or she did not see the notices.

This case is different, however. The dunning notices were sent to an address to which petitioner had no recent ties. Petitioner never had an opportunity to respond to the repayment agreement or the dunning notices. Thus I believe that the use of the tax intercept was invalid in this case.

The other issue is whether this appeal is timely. An appeal of a tax intercept action must be filed within 30 days of the notice. Wis. Stat., §49.85(3)(a)2. However, the Division of Hearings and Appeals has long held that a petitioner can provide evidence that he could not and did not receive the notice as an affirmative response to a timeliness question. In this case the tax intercept notice was sent in January, 2014 to an address at which petitioner no longer lived; petitioner had been deleted from that household by the FS agency in January, 2013. Thus it is credible that petitioner was unaware of the tax intercept until it actually occurred.

I conclude that any tax refund intercepted by the PACU from petitioner must be refunded to petitioner. Petitioner should note that he is not free of this liability, however. He remains a liable person on the debt, and I urge him to come to a repayment agreement (or to persuade his mother to reach a repayment agreement), or the agency will simply start the intercept process again.

### CONCLUSIONS OF LAW

The PACU incorrectly intercepted petitioner's state income tax refund to recover an FS overpayment because the repayment and dunning notices were sent to petitioner at an address which he did not live or otherwise receive mail at.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the PACU with instructions to refund to petitioner any funds intercepted from his state tax refund as recovery for claim no. [REDACTED]. The agency shall take the action within 10 days of this decision. This decision does not rescind the claim and does not prevent the PACU from taking future appropriate action to recover it.

### **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 10th day of April, 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 April 10, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit