



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FTI/164105

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Marathon County Department of Social Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on March 31, 2015.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following FS overpayment Claim: Claim # [REDACTED]; October 1, 2012 to May 31, 2013; outstanding balance of \$2,573.56 (original amount of \$2,905.56).

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: Katelyn Lillie, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County, Wisconsin.

2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following FS overpayment Claim: Claim # [REDACTED]; October 1, 2012 to May 31, 2013; outstanding balance of \$2,573.56 (original amount of \$2,905.56).
3. Petitioner was an adult member of the FS household during the time period of the overpayment identified in *Finding of Fact #2*, above.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

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

Wis. Stat. § 49.85(4) (2013-14).

Petitioner does not dispute the existence of the overpayment. Petitioner testified that another adult was living with him during the time period of the overpayment and that adult should be responsible for at least ½ of the overpayment. However, the law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, liability for an FS overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full. FWH 7.3.1.2. Finally, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the FS overpayment Claim identified in *Finding of Fact #2*, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$2,573.56 and that amount may be applied against the FS overpayment Claim identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED; DHS may certify the amount of \$2,573.56 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the FS overpayment Claim identified in *Finding of Fact #2*, above.

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

\sSean P. Maloney
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.

Marathon County Department of Social Services
Public Assistance Collection Unit