



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/164160

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 08, 2015, at Madison, Wisconsin.

The issue for determination is whether petitioner's appeal is timely.

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]

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. On June 7, 2013, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [Redacted], indicating that he was liable for overissued FoodShare benefits in the amount of \$2,569.00 for the period of August 1, 2012 – February 28, 2013. (Exhibit 2-1)

3. The agency sent Petitioner a repayment agreement on July 2, 2013. (Exhibit 2-4)
4. The agency sent the Petitioner dunning notices (reminders about the debt) on September 4, 2013, October 2, 2013 and November 4, 2013. (Exhibit 2-4)
5. On December 13, 2013, 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 2-1a)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 24, 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 his mother had signed up for FS, not him. Petitioner argued that, as a full time student, he cannot afford being held liable for a FS debt that was not his fault.

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.

...

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control

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

Based upon the foregoing regulations and policy, the Petitioner is liable for the underlying Foodshare overpayment, because he was an adult member of the food unit, which also included his mother.

With regard to the underlying overpayment, the 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.

....

7 CFR 273.15(g)

Petitioner’s February 24, 2015, appeal was filed well beyond 90-days from the date of the June 7, 2013, overpayment notice. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

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 December 13, 2013. As such, Petitioner needed to file his appeal by January 13, 2013. Petitioner did not file his appeal until February 24, 2015. 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 is jointly and severally liable for any FoodShare overpayment to his household/food unit.
2. Petitioner’s appeal of the underlying FoodShare overpayment is untimely.
3. 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 20th day of April, 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 April 20, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit