



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/164269

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals can order the Department of Treasury to return money it intercepted from the Petitioner's Federal Tax Return.

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: Belinda Bridges HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On January 18, 2013, the Petitioner filed an appeal to contest an overpayment determination, claim number [redacted]. (Exhibit 8, pgs. 42 and 43)

3. On March 18, 2013, the Division of Hearings and Appeals issued a decision finding that Milwaukee Enrollment Services (MILEs) had shown that the Petitioner and the father of her child resided together during relevant times, but that it had not met its burden to prove the Petitioner was actually over-issued FoodShare benefits for the period of January 2010 through December 2010. The assigned administrative law judge ordered MILEs to review the Petitioner's case, re-determine the amount of the overpayment, if any, and issue to the Petitioner a new overpayment notice. (Exhibit 8, pgs. 42-44)
4. On March 22, 2013, MILEs sent the Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that she had been overpaid FoodShare benefits in the amount of \$3,453.00 for the period of January 4, 2010 to December 31, 2010. (Exhibit 8, pgs. 30-35)
5. On April 2, 2013, the Public Assistance Collections Unit (PACU) sent the Petitioner a repayment agreement. (Exhibit 8, pgs. 36-38)
6. On May 2, 2013, June 4, 2013, and July 2, 2013, PACU sent the Petitioner dunning notices / reminders concerning the overpayment. (Exhibit 8, pgs. 39-41)
7. On August 16, 2013, PACU sent the Petitioner a notice, advising her that it would be intercepting any State tax refund, to which she might be entitled. (Exhibit 8, pgs. 5-6)
8. All notices were sent to the Petitioner at an address on Winfield Avenue and there is no record of any returned mail. (Exhibit 8, pgs. 30-41; testimony of Belinda Bridges)
9. The Petitioner moved from the Winfield address sometime in June 2013 and stayed with her mother on 25th Street until August/September 2013, when she moved into a home that she purchased on 18th Street. (Testimony of Petitioner)
10. Sometime on or before September 24, 2014, the Petitioner filed for bankruptcy. (Exhibit 4)
11. On February 25, 2015, the Department of Treasury sent the Petitioner a notice that \$3,470 of her Federal tax return had been intercepted and applied to a debt claimed by PACU. (Exhibit 2)
12. This satisfied the overpayment in its entirety. (Exhibit 7)
13. On February 27, 2015, the Petitioner filed a request for fair hearing. (Exhibit 1)
14. On March 12, 2015, PACU sent the Petitioner a letter indicating that it incorrectly intercepted \$705.75 of her State tax refund. PACU enclosed a check to reimburse her the \$705.75. (Exhibit 5)

DISCUSSION

At the hearing, the Petitioner indicated that she filed an appeal, because the interception of \$3,470 from her federal tax return was too much for her and she hoped that she could get some of the money back and set up a payment plan. However, the Division of Hearings and Appeals does not have jurisdiction to grant the relief that the Petitioner seeks.

The interception of Petitioner's federal tax return was done by the Treasury Department, a federal agency, apparently as part of the Treasury Offset Program (TOP). The Division of Hearings and Appeals has no authority to order the Treasury Department to return the Petitioner's money. "Although State Agencies administer the FSP [Food Stamp Program], these benefits are federally funded and claims established are federal debts." Federal Register, vol. 65, No. 130/ Thursday, July 6, 2000, pg. 41753¹.

¹ The Federal Register, Vol. 65, No. 130/ Thursday, July 6, 2000 may be found on-line at:

<http://www.fns.usda.gov/sites/default/files/070600.pdf>

In 2008, the United States Department of Agriculture, Food and Nutrition Service from 2008, issued a manual entitled, Collecting Food Stamp Program Recipient Claims through The Treasury Offset Program. On page 8, it indicates that debtors are entitled to a review of the intended TOP action and that the review is, “a review of the record and the debtor is not entitled to a face-to-face review.” A copy of that page is included with this decision for the Petitioner’s review.

Thus, if the Petitioner wishes to contest the interception of her Federal Tax Return, she must contact the State Agency, presumably the Public Collections Unit, and request a review. If she does not find that satisfactory, Petitioner’s only recourse is to file a court action. She might wish to contact Legal Action of Wisconsin (414-278-7222; toll free 888-278-0633), if that is the avenue she wishes to pursue. Other rules governing the TOP program can be found on-line at:

http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/top/TOP_rules_reqs_fact_sheet.pdf

With regard to the State Tax Intercept, that issue appears to be moot for a number of reasons.

First, 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 notice was August 16, 2013. As such, Petitioner needed to file her appeal by September 15, 2013. Her appeal was not filed until February 27, 2015, almost 18 months late. As such, her appeal of the State tax intercept is untimely and there is no jurisdiction to hear the merits of her appeal.

Second, PACU returned any money intercepted through a State tax intercept. Third, the Petitioner’s debt has been paid in full. As such, there should be no future interceptions of Petitioner’s State tax refunds to satisfy the subject overpayment. Fourth, PACU would not be able to implement a new State tax intercept at this time, because the Petitioner filed for bankruptcy. (See *FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*)

Even if the issue was not moot, I would find that the agency correctly implemented the tax intercept in August 2013.

- 1) A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. The agency did this; it sent the Petitioner overpayment notices on March 22, 2013 and it sent her a repayment agreement on April 2, 2013.
- 2) If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.* The agency did this. Indeed, the Petitioner does not dispute the fact that she did not make any payments toward the debt. As such, the agency correctly issued dunning notices to the Petitioner on May 2, 2013, June 3, 2014 and July 2, 2013.
- 3) To use a tax intercept, the person must have received three or more dunning notices. *FoodShare Wisconsin Handbook §7.3.2.10* As discussed above, the agency sent the Petitioner three dunning notices in May, June and July 2013.
- 4) To use a state tax intercept the debt must be:
 1. Valid and legally enforceable.
 2. At least \$20;
 3. State: At least 30 days from notification of Overissuance;
 4. Free from any current appeals.
 5. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

There is nothing in the record to suggest the debt is not valid or legally enforceable; it is over \$20.00; the tax intercept notice was issued more than 30 days after the agency issued the overpayment notice; there do not appear to be any appeals of the underlying overpayment and there is no indication that the Petitioner filed for bankruptcy at the time the notice of tax intercept was issued.

- 5) 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). The agency sent the Petitioner a notice of tax intercept on August 16, 2013.

The Petitioner asserts that she did not receive any of the notices mailed to the Winfield address between March 2013 and August 2013, even though she was living at the address until at least until June 2013. The Petitioner testified that she was the victim of domestic violence and was in and out of her home on Winfield. The Petitioner asserts that as a consequence, she was not always allowed access to her mail.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing and states that, “summons, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” *State ex. rel Flores*, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. *Id.* at 613.

The presumption that the Petitioner was timely served with the overpayment notice, repayment agreement, three dunning notices and notice of tax intercept, is supported by the fact that the Winfield address was a correct address, by the fact that the Winfield address was the last known address reported to the agency at the time and by the fact that the agency did not receive any returned mail. There is nothing in the record to substantiate the Petitioner’s claim that she was the victim of domestic violence and unable to get to her mail. As such, there is insufficient evidence of non-receipt.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction to order the Department of Treasury to issue a refund of the money intercepted from the Petitioner’s Federal Tax return.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 26th day of March, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 26, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit