



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/164270

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 Public Assistance Collection Unit in regard to recover of an overpayment of FoodShare benefits (FS), a telephone hearing was held on March 17, 2015.

The issue for determination is whether the respondent correctly instituted a tax intercept.

There appeared at that time 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: Kristine DeBlare
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of NA.
2. On June 19, 2012, the respondent sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating his household was overissued FoodShare benefits in the amount of \$1,051.00 for the period of May 24, 2011, to October 31, 2011. (Exhibit 2-6)
3. The agency sent Petitioner a repayment agreement on July 3, 2012. (Exhibit 2-4)

4. The agency sent the Petitioner dunning notices (reminders about the debt) on August 2, 2012, September 5, 2012, and October 5, 2012. (Exhibits 2-5, 2-6, and 2-7). The dunning notices were all sent to petitioner's correct address in [REDACTED], [REDACTED].
5. On November 16, 2012, the agency sent the Petitioner a notice of State tax intercept, advising him that, "1,051 may be intercepted from any tax refunds or credits due you now or in the future." (Exhibit 2)
6. FoodShare Overissuance Claim Number [REDACTED] was satisfied by federal tax intercept on February 20, 2015.
7. The Petitioner filed a request for fair hearing with the Division of Hearings and Appeals on February 27, 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 he never activated his card or used any of the FS allotted to him.

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.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner concedes receipt of the overpayment information, but argued that he didn't appeal earlier because he did not know how to proceed. Petitioner's overpayment and tax intercept notices both contained appeal instructions, as well as telephone number and website addresses where petitioner could have gleaned such information. I do not find that the petitioner has established any good cause for his delayed appeal filing. Petitioner's February 27, 2015, appeal was filed more than two years after the date of the June 19, 2012, notice of overpayment. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

With regard to the 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 November 16, 2012. As such, Petitioner needed to file his appeal by December 16, 2012. Again, Petitioner did not file his appeal until February 27, 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's appeal of the underlying FoodShare overpayment is untimely.

- 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 26th day of March, 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 March 26, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit