



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



:



PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 19, 2015, at [redacted], Wisconsin. At the request of the parties, the record was held open until March 26, 2015 for the county agency to review new information about this case and send a reconsideration summary to DHA and to petitioner. ES Supervisor [redacted] sent a March 24, 2015 letter to DHA stating that the agency stipulates that the revised and reduced overpayment is \$1,360 for the reduced time period of April 16, 2010 through December 31, 2010. See Exhibit 6. The petitioner did not submit any response to DHA.

The issue for determination is whether the Department correctly sought to intercept the petitioner's tax refund to collect an overpayment of FoodShare (FS) benefits for the reduced FS overpayment amount of \$1,360 for the reduced time period of April 16, 2010 through December 31, 2010.

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] ES Supervisor
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

[REDACTED]

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County who resided at least four nights per week in a FS group of two (with his father) in his father's home during the period of April 16, 2010 to April 30, 2011 and June 14, 2011 through December 31, 2011, when he was under 22 years of age.
2. On August 7, 2012, the county agency issued Notification of Food Stamp Overissuances to the petitioner at his father's correct address of record advising him that it was seeking repayment of \$3,389.10 in FS benefit overpayments from the overpayment period of April 16, 2010 to April 30, 2011 and June 14, 2011 through December 31, 2011, due to the client error of failure to report accurate household member (petitioner residing in his father's home and his father's income) resulting in incorrectly under-budgeting the petitioner's household's income.
3. The Department sent three Dunning notices to the petitioner regarding his FS overpayment on September 5, 2012, December 4, 2012, and March 4, 2013.
4. The petitioner did not file any timely appeal to the Division of Hearings and Appeals (DHA) regarding his August 7, 2012 FS overpayment notices.
5. The Department sent a December 13, 2013 FS tax intercept notice to the petitioner at the county agency (1900 Center Avenue, Janesville, WI 53546) notifying petitioner that the remaining unpaid FS overpayment of \$3,172 would be recovered through interception of his state or federal income taxes or credits.
6. On February 23, 2015, petitioner mailed an appeal letter to the Division of Hearings and Appeals (DHA) which was received at DHA on February 27, 2015. That appeal letter requested an appeal of his December 13, 2013 tax intercept notice and the underlying FS overpayment periods.
7. The petitioner was unable to establish that he had filed any FS overpayment or tax intercept appeal with DHA prior to February 23, 2015.
8. At the request of the parties, the record was held open until March 26, 2015 for the county agency to review new information about this case, and send a reconsideration summary to DHA and to petitioner. ES Supervisor [REDACTED] sent a March 24, 2015 letter to DHA stating that the agency stipulates that the petitioner's revised and reduced FS overpayment is **\$1,360** for the reduced time period of **April 16, 2010 through December 31, 2010**. See Exhibit 6. The reason for the reduced overpayment was that petitioner turned 22 years of age as of December 30, 2010, and thus did not need to include his father and his father's income in his FS household. The petitioner did not submit any response to DHA.
9. The remaining amount of petitioner's FS overpayment was \$1,360 as of March 24, 2015.

## DISCUSSION

Wis. Stat. § 49.85, 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 overpayment of general relief benefits, overissuance of Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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 hearing right is described in Wis. Stat. § 49.85(4) (b), as follows:

[REDACTED]

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.**  
(Emphasis added)

As noted in Findings of Fact #2 - #4 above, the Petitioner had the opportunity for a prior hearing on the merits of his FS overpayment but failed to file any timely appeal to DHA.

During the March 19, 2015 hearing, the petitioner basically admitted that he received his August 7, 2012 FS overpayment notices, and did not contest that he also received his dunning notices. Furthermore, there is no evidence that any of those notices were returned as undeliverable. Moreover, petitioner did not establish with any reliable evidence that his father has any problems with his mail delivery. However, petitioner alleged that he did not timely receive his December 13, 2013 tax intercept notice at the county agency, and the agency did not establish when or if petitioner picked up that notice at the agency. Thus, the petitioner's tax intercept appeal is timely for appeal purposes.

The petitioner did not dispute that he had received FS benefits during the overpayment period. Petitioner also did not dispute that he had not filed a timely appeal of those FS overpayments. As noted in Finding of Fact #8 above, ES Supervisor [REDACTED] sent a March 24, 2015 letter to DHA indicating that the county agency stipulates that the petitioner's revised and reduced FS overpayment is **\$1,360** for the reduced time period of **April 16, 2010 through December 31, 2010**. See Exhibit 6. Based upon the above, the determination by the Department that petitioner was overpaid in the reduced amount of \$1,360 is affirmed. The petitioner explained that it would be a difficult financial burden to repay the FS overpayment and the overpayment was basically not his fault. However, the Department is required to recover all overpayments of public assistance benefits due to client and non-client error, and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19...); 7 C.F.R. § 273.18(a) ("...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive...), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

### CONCLUSIONS OF LAW

1. The county agency correctly revised and reduced the petitioner's FS overpayment to be \$1,360 for the reduced time period of April 16, 2010 through December 31, 2010.
2. That the Department needs to issue an amended FS tax intercept notice to the petitioner, and then should correctly certify a public assistance remaining debt of \$1,360 as of March 24, 2015 in overpaid FS benefits to the Wisconsin Department of Revenue for state income tax refund intercept from the petitioner.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency (**Attention: ES Supervisor [REDACTED]**) with instructions to take the necessary action to notify the Department's Public Assistance Collection Unit to issue to the petitioner an amended FS tax intercept notice in the reduced amount of \$1,360 for the reduced FS overpayment time period of April 16, 2010 through December 31, 2010, within 10 days of the date of this decision. In all other respects, the petition for review is hereby 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 Madison,  
Wisconsin, this 23rd day of April, 2015

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\sGary M. Wolkstein  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 23, 2015.

Rock County Department of Social Services  
Public Assistance Collection Unit