



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FTI/164323

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the department may intercept the petitioner's income tax refund to recover an overpayment of FoodShare made to her parent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Polk County.
2. The county agency notified the petitioner on January 13, 2012, that it would intercept her income tax refund to recover a \$2,570 overpayment of FoodShare made to her aunt's household. The period covered by the overpayment was June 9, 2010, through November 30, 2010.

3. The petitioner turned 18 on February 21, 2010.
4. The petitioner was not living with her aunt from June 9, 2010, through November 30, 2010.
5. All overpayment and intercept notices meant for the petitioner were sent to her aunt's house.

DISCUSSION

The department intercepted the petitioner's tax refund to recover a \$2,570 overpayment of FoodShare provided to her aunt's household from June 9, 2010, through November 30, 2010. She claims she did not live with her aunt during this period.

State FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). Those responsible for paying an overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred." 7 CFR § 273.18(a)(4)(i). The petitioner turned 18 on February 21, 2010. An agency may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amount it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85.

The first question is whether the petitioner's appeal is timely. Recipients must appeal negative FoodShare decisions within 90 days. Wis. Admin. Code § HA 3.05(3). Those wishing to challenge the decision to intercept a tax refund must do so within 30 days of when the agency notifies them of its intention. Wis. Stat. § 49.85(3)(a)2. The agency sent various notices to the petitioner about the overpayment five times in 2011 and notified her of its decision to intercept her taxes on January 13, 2012. Recipients have a duty to inform the agency when they move, but in this case the petitioner was a high school aged girl who would have had no dealings with agency at the time of the overpayment. Based upon this, I find that her appeal was timely because she never received notice of any of the proposed actions against her.

The petitioner's testimony was only evidence concerning whether she lived with her aunt during the overpayment. She denied that was, and her testimony was credible. Because she was not in the household, she is not responsible for the overpayment. Because she was not responsible for the overpayment, the agency cannot intercept her tax refund to recover the overpayment. Therefore, the department must end its attempts to recover her tax refund and reimburse her for any refund already taken.

CONCLUSIONS OF LAW

1. The petitioner was never notified of the FoodShare overpayment or the decision to intercept her tax refund discussed in this decision.
2. The department cannot intercept the petitioner's income tax refund because she was not part of the household in which the overpayment occurred.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency, the Department of Revenue, the Public Assistance Collection Unit, and the Department of Workforce Development with instructions that within 10 days of the date of this decision they take all steps necessary to correct their records to remove any finding that the petitioner is responsible for an overpayment of FoodShare that occurred from June 9, 2010, through November 30, 2010, that it end any attempt to recover that overpayment by intercepting her state or federal income tax refund, and that it reimburse her for any interception of those refunds that has already occurred.

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 8th day of April, 2015

\sMichael D. O'Brien
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 8, 2015.

Polk County Department of Social Services
Public Assistance Collection Unit