



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/164504

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 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 April 07, 2015, at Milwaukee, Wisconsin.

NOTE: The record was held open to give the Petitioner an opportunity to submit copies of correspondence she had with PACU regarding the subject FoodShare overpayment. Petitioner submitted a letter from PACU dated January 31, 2013, a notarized statement from the Petitioner dated February 26, 2013 and a letter addressed to "Food and Consumer Service" dated February 26, 2013. The documents have been marked as Exhibits 3, 4, and 5, respectively, and entered into the record.

The issue for determination is whether the Petitioner's appeal was filed timely.

There appeared at that time and place 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: Pamela Hazley, 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 NA.
2. In June 2012, Ms. Hazley spoke to the Petitioner about her daughter's case and the household composition between 2007 and 2009. (Testimony of Ms. Hazley; Testimony of Petitioner; Exhibit 2, pgs. 10 and 11)
3. In 2007, Petitioner's daughter would have been approximately 24 years old. (Exhibit 2, pg. 6)
4. On July 13, 2013, Milwaukee Enrollment Services (MILES) sent the Petitioner three Notifications of FoodShare Overissnace:
  - Claim number [REDACTED] - \$4,384.00 for the period of August 1, 2007 to July 31, 2008.
  - Claim number [REDACTED] - \$5558.00 for the period of August 1, 2008 to July 31, 2009
  - Claim number [REDACTED] - \$2104.00 for the period of August 1, 2009 to November 31, 2009.

(Exhibit 2, pgs. 71-94)
5. The notices were sent to the Petitioner at an address on [REDACTED]. (Id.)
6. The [REDACTED] address was the address last known to the agency and there is no record of the notices being returned to the agency. (Testimony of Ms. Hazley)
7. The overpayment claims were based upon an application submitted by Petitioner's daughter for FoodShare benefits and her alleged failure to accurately report her household composition and household income. (Testimony of Ms. Hazely; Exhibit 2, pg. 61)
8. Due to limitations of the Department of Health Services' computer system, neither the Public Assistance Collections Unit (PACU) nor MILES sent the Petitioner a repayment agreement or any dunning notices. (Testimony of Ms. Hazely)
9. On December 14, 2012, PACU sent the Petitioner a notice, advising her that her state tax refunds would be intercepted to satisfy the overpayment. The notice was sent to the Petitioner at the Beloit Rd. address. (Exhibit 2, pg. 3)
10. There is no record of the tax intercept notice being returned to the agency. (Testimony of Ms. Hazley)
11. On January 21, 2013, PACU sent the Petitioner a letter thanking her for her inquiry into the overpayment and advising her that it was referring the debt to the Treasury Offset Program, which would cause her Federal tax returns to be intercepted. The January 21, 2013 letter told the Petitioner that she could request a written review of her case by sending a request to the Food and Consumer Service. (Exhibit 3)
12. The January 21, 2013 letter was sent to the Petitioner at an address on [REDACTED]. (Exhibit 3)
13. On February 26, 2013, the Petitioner sent a request for review to the Food and Consumer Service, along with a notarized statement indicating that her daughter did not live with her and that she has had custody of her granddaughter. (Exhibits 4 and 5)
14. The Petitioner filed a request for fair hearing with the Division of Hearings and Appeals on March 10, 2015. (Exhibit 1)

**DISCUSSION**

It may very well be that in this case, the state agency made some errors. The record indicates that due to technological limitations, the state agency did not send Petitioner a repayment agreement and therefore failed to give the Petitioner an opportunity to enter into a satisfactory repayment agreement, as required

by *FoodShare Wisconsin Handbook*, §§7.3.1.8 and §7.3.2.10; 7 CFR §273.18(e)(3)(iv)(K) and 7 CFR §273.18(e)(4) and (5). However, the Division of Hearings and Appeals no longer has jurisdiction over the matter, because Petitioner's appeal is 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 notice was December 14, 2012. As such, Petitioner needed to file her appeal with the Division of Hearings and Appeals by January 13, 2013. Her appeal was not filed until March 10, 2015, three years, later. As such, her appeal is untimely, with regard to the issue of the state tax intercept, and there is no jurisdiction to hear the merits of her appeal.

The Petitioner states that she did not get the December 2012 state tax intercept notice, because she moved from the [REDACTED] address, two years earlier. However, Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, "summonses, 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.

In the case at hand, there is insufficient evidence to overcome the presumption that the Petitioner was properly served with notice of the state tax intercept. Ms. Hazley testified credibly that she personally investigated the subject overpayment and manually issued the overpayment notices to the Petitioner. Ms. Hazley also testified that there is no record of any mail being returned to the agency. Further, the Petitioner was clearly aware of the overpayment, because within six weeks of the State tax intercept notice being mailed, the Petitioner contacted the Public Assistance Collection Unit on or before January 21, 2013, to inquire about the overpayment. (See Exhibit 3) As such, the preponderance of the credible evidence supports a finding that the Petitioner was timely served with notice of the state tax intercept.

The Petitioner argues that she tried to file an appeal, but never received a response. The Petitioner provided Exhibits 4 and 5 as evidence. However, Exhibit 4 is a request for review of PACU's decision to refer the debt to the Treasury Offset Program, which is a *federal* matter, dealing with the interception of her *federal* tax return. That is not the same thing as filing an appeal with the Division of Hearings and Appeals for review of PACU's decision to intercept her *state* tax returns. A request for appeal to the *federal* Food and Consumer Service agency does not serve as a request for appeal with the *state* Division of Hearings and Appeals.<sup>1</sup>

The Petitioner also argues that she should not be held liable for the overpayment, because her daughter was the primary person on the case. Again, there is no jurisdiction to review this claim, because

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<sup>1</sup> Conversely, if the Petitioner is wondering what happened to her request for a federal review of her case, she needs to make further contact with the Food and Consumer Service Agency or she may wish to contact the Department of Treasury at (800) 304-3107. It should be noted that the Treasury website contained the following notice:

**NOTICE: SUPER SATURDAY** - On Saturday, April 11, 2015, the DMS's Unified Call Center will be open from 8:00 a.m. until 12:00 p.m. central time. This is a **one day only event**. The business lines open will be:

- The Treasury Offset Program (TOP): (800) 304-3107
- Cross-Servicing: (888) 826-3127
- Education: (855) 837-2984

Petitioner's appeal is untimely. In addition, the Petitioner's argument is an equitable one, meaning it is based upon what the Petitioner thinks is fair and not upon what the law requires. However, an administrative law judge does not possess any equitable powers but must apply the law as it is written.<sup>2</sup> As such, I have no authority to relieve the Petitioner of liability for the overpayment.

For Petitioner's education, I will point out the following:

7 CFR §273.18 (a)(4) states that the following individuals are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (ii) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

This is reflected in section of 7.3.1.2 of the FoodShare Wisconsin Handbook, which indicates, "all adult or emancipated minors that were included in the household or should have been included in the household at the time of the overpayment occurred, are liable for repayment of the overissuance of FoodShare benefits..."

However, simply living with someone does not necessarily make them a part of your household for FoodShare purposes. 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.

*7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

Thus, to be considered part of the same FoodShare household, people need to customarily purchase food and prepare meals together.

It should also be noted that, "liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full." *FSH §7.3.1.2; see also 7 CFR §273.18(a)(4)(i)*

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

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<sup>2</sup> See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

**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 9th day of April, 2015.

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\sMayumi M. Ishii  
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 9, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit