



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

Redact

[Redacted]

DECISION

FTI/164604

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 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 FoodShare benefits (FS), a telephone hearing was held on April 08, 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]

Redact

[Redacted]

Respondent:

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

By: Redact

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 West Memphis, Arkansas.
2. On October 22, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, indicating her household was overissued FoodShare benefits in the amount of \$4,008.00 for the period of May 1, 2013, to October 31, 2013. (Exhibit 2-3)
3. The agency sent Petitioner a repayment agreement on November 5, 2013. (Exhibit 2-4).

4. Petitioner did not appeal the October 22, 2014, notice of FS Overissuance.
5. The agency had previously sent the Petitioner dunning notices (reminders about a debt) on January 3, 2014, February 4, 2014, and March 4, 2014, pertaining to another FS overpayment claim. (Exhibit 2-5, 2-6, and 2-7)
6. On February 13, 2015, the agency sent the Petitioner a Notice of State Tax Intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt."
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 9, 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 (1) someone must have been using her Wisconsin FS card without her permission, and (2) she assumed that her FS case in Wisconsin would close when she opened a new case in Tennessee. She concedes that she received the repayment agreement but stated that she did not understand it.

FoodShare regulations state that a household is composed of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." See 7 C.F.R. §273.1(a). Wisconsin's policy is clear in requiring that petitioner cannot be a member of more than one FS group in the same month. The policy is found in the *FoodShare Wisconsin Handbook*, §3.4.1, available online at <http://www.emhandbooks.wi.gov/fsh/>, and provides the following guidance in these situations:

A person cannot be a member of more than 1 food unit and 1 *FS* group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

*FS Handbook*, §3.4.1; see also 7 CFR 273.3(a).

"All adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred..." *FSH* §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)

While it would appear certain that the petitioner is liable for the duplicate FS benefits, 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's March 9, 2015 appeal was filed well beyond 90-days from the date of the October 22, 2014, overpayment notice. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is timely. However, the petitioner has not established any error of the respondent in asserting the tax intercept. The record indicates that the proper notices were issued, and petitioner herself conceded that she received the repayment agreement and was, therefore, aware of the debt asserted by the respondent. Based upon the record before me, I conclude that the respondent has properly instituted a state tax intercept to collect the FS overpayment at issue.

### **CONCLUSIONS OF LAW**

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner has not established any error in the respondent's institution of the State Tax Intercept.

**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 30th day of April, 2015.

---

\sPeter McCombs  
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 30, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit