



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FTI/164861

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on April 09, 2015. The record was held open to allow the petitioner and respondent to submit additional documentation, which was timely provided and received on April 9, 2015 (petitioner) and April 13, 2015, respectively.

The issue for determination is whether petitioner's appeal is timely.

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

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Sauk County.

2. On October 31, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number Redact, indicating his household was overissued FoodShare benefits in the amount of \$7,255.00 for the period of November 1, 2013 to October 31, 2014. (Exhibit 2-1)
3. The agency sent Petitioner a repayment agreement on November 5, 2014. (Exhibit 2-4)
4. The agency sent the Petitioner dunning notices (reminders about the debt) on December 2, 2014, January 5, 2015 and February 3, 2015. (Exhibit 2-4)
5. On March 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." (Exhibit 2-5)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 24, 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 she does not think she should be held liable for the overpayment underlying the tax intercept, because she and her boyfriend, though living together, did not purchase and prepare food together, nor did they have any children, during the overpayment period.

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 24, 2014 appeal was filed well beyond 90-days from the date of the October 31, 2014 overpayment notice. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment. Petitioner testified that she had originally faxed in a Request for Hearing in December, 2014. The record was held open to allow her to locate and forward proof of the filing; the petitioner immediately forwarded, via facsimile, a copy of a Request for Fair Hearing, with a handwritten date of January 19, 2015. See, Exhibit 3. Unfortunately, there was no proof of transmission of this document on January 19, 2015. As such, I am unable to conclude that this was ever filed, as represented by the petitioner.

With regard to the State Tax Intercept, petitioner again argued that it is unfair that the agency is recovering from her because she did not purchase and prepare food with her boyfriend, even though they resided together, during the overpayment period. Second, she testified that financially she is not able to help repay the overpayment.

The problem remains that petitioner did not appeal within 90 days of the October 31, 2014, overpayment notices. State law provides that the Division of Hearings and Appeals now cannot hear the issue of who

is liable for the claim. Furthermore, there is nothing in the law that allows the Division of Hearings and Appeals to prevent the imposition of the tax intercept due to financial hardship.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals cannot hear the merits of an overpayment claim following notice of a tax intercept when the person did not appeal the original overpayment notice timely.
2. The PACU may utilize a tax intercept to recover the claim in this case.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same 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 11th day of May, 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 May 11, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit