FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

FTI/165703

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 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 ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 14, 2015.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following FS overpayment: Claim Number: Redact; May 1, 2011 to October 31, 2011; original amount $1,039.00; outstanding balance $1,004.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Redact, HSPC, Senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Milwaukee County, Wisconsin.

2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following FS overpayment: Claim Number: Redact; May 1, 2011 to October 31, 2011; original amount $1,039.00; outstanding balance $1,004.00.

3. Petitioner received a written notice entitled "**IMPORTANT NOTICE ABOUT YOUR STATE TAX REFUND AND CREDITS**" (UPPER CASE and **bold** in original) dated March 15, 2013 informing her that her Wisconsin State tax refund would be intercepted and applied toward the overpayment noted in *Findings of Fact* #2.

4. On or about March 21, 2013 petitioner requested a Hearing concerning the FS overpayment detailed in *Findings of Fact* #2, above; a Hearing was scheduled for May 8, 2013 and was rescheduled at petitioner's request; another Hearing was scheduled for May 29, 2013; petitioner did not appear for that May 29, 2013 Hearing; a *Decision* dated May 30, 2013 was issued dismissing petitioner's petition as abandoned. See, DHA Case No. FTI-148199 (Wis. Div. Hearings & Appeals May 30, 2013) (DHS).

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

> "If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] 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."
>
> Wis. Stat. § 49.85(4) (2013-14).

Petitioner has already had an opportunity for a Hearing concerning the FS overpayment detailed in *Findings of Fact* #2, above. A Hearing was scheduled for May 8, 2013 and was rescheduled at petitioner's request. Another Hearing was scheduled for May 29, 2013. Petitioner did not appear for that May 29, 2013 Hearing. A *Decision* dated May 30, 2013 was issued dismissing petitioner's petition as abandoned. See, DHA Case No. FTI-148199 (Wis. Div. Hearings & Appeals May 30, 2013) (DHS). Thus, petitioner may not now contest the merits of the overpayment.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the FS overpayment claim identified in *Findings of Fact* #2, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of $1,004.00 and that amount may be applied against the FS overpayment Claim identified in *Findings of Fact* #2, above.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED; DHS may certify the amount of $1,004.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the FS overpayment Claim identified in *Findings of Fact* #2, above.

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 26th day of May, 2015

_____

\sSean P. Maloney
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 26, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit