



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact Redact
Redact
Redact

DECISION

FTI/165995

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on June 02, 2015, at Green Bay, Wisconsin.

The issues for determination are: a) whether the petitioner's appeal of her February 13, 2015 FoodShare (FS) tax intercept is timely; and b) whether the petitioner had a prior opportunity for a hearing on the issue of whether the Department correctly sought recovery of a FS overpayment to collect overpayments of FoodShare benefits during the period of December 9, 2013 to September 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact Redact
Redact
Redact

Respondent:

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

By: Redact, ES Supervisor
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Brown County who resides with her boyfriend, Redact Redact, in the same household.

2. The petitioner applied for FoodShare (FS) benefits on or about January 7, 2014, and provided to the agency [Redact]'s wages and social security number.
3. The petitioner and [Redact Redact] received FoodShare (FS) benefits for a FS household of two.
4. On September 22, 2014, the county agency issued a Notification of Food Stamp Overissuance to [Redact Redact] at his correct address of record that it had opened FS overpayment claim. That notice indicated that the county agency was seeking repayment of \$1,246.00 in FS benefit overpayments during the period from December 9, 2013 to September 30, 2014, due to the agency's error to not correctly budget [Redact]'s income in calculating FS eligibility and benefits resulting in gross household income above the income eligibility limit for a FS group of two.
5. On September 22, 2014, the county agency issued a Notification of Food Stamp Overissuance to the [Redact Redact] at the same address as [Redact Redact] that it had opened FS overpayment claim. That notice indicated that the county agency was seeking repayment of \$1,246.00 in FS benefit overpayments during the period from December 9, 2013 to September 30, 2014, due to the county agency's error to not correctly budget [Redact]'s income in calculating FS eligibility and benefits resulting in gross household income above the income eligibility limit for a FS group of two.
6. Neither [Redact] nor [Redact] filed any timely appeal to the Division of Hearings and Appeals (DHA) regarding either of their September 22, 2014 FS overpayment notices.
7. The county agency sent three Dunning notices to [Redact] and to [Redact].
8. The Department's Public Assistance Collection Unit (PACU) sent a February 13, 2015 FS tax intercept notice to the petitioner at her correct address of record notifying her that the remaining unpaid FS overpayment of \$1,246.00 would be recovered through interception of her state or federal income taxes or credits. That February 13, 2015 notice stated that the remaining \$1,246 FS overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. Exhibit 1. That February 13, 2015 FS Tax Intercept Notice was received by the petitioner.
9. The Petitioner telephoned her FS intercept appeal to the Division of Hearings and Appeals (DHA) on May 14, 2015 to appeal her February 13, 2015 FS tax intercept notice. Exhibit 3.
10. The petitioner was unable to establish that she had timely filed any FS overpayment or tax intercept appeal to DHA prior to May 14, 2015.
11. As of the June 2, 2015 hearing date, the remaining amount of petitioner's FS overpayment was \$1,246.00.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and medical assistance payments made incorrectly. The department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's FS state tax intercept appeal was filed with the Division of Hearings and Appeals on May 12, 2015 which is about 90 days after the date of the February 13, 2015 FS tax intercept notice which was sent to the petitioner.

During the June 2, 2015 hearing, petitioner admitted that she received the February 13, 2015 FS tax intercept notice (Exhibit 1). The petitioner admitted that she had no good excuse for her late filing but alleged that she did not know what to do about her appeal. Such excuse does not establish any good cause for her failure to timely file her tax intercept appeal. The petitioner filed her FS tax intercept appeal on May 14, 2015 which was significantly more than 30 days after the date of the February 13, 2015 tax intercept notice that was received by her. Therefore, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly imposed a February 13, 2015 FS tax intercept against the petitioner's taxes, as her appeal is untimely.

However, even if the petitioner's appeal had been timely, Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly. The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4) (b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **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.**
(Emphasis added)

As noted in Findings of Fact #3 - #6 above, the petitioner had the opportunity for a prior hearing on the merits of the FS overpayment but she failed to file any timely appeal to DHA. There have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) ("...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed a February 13, 2015 FS tax intercept against the petitioner's taxes, as the petitioner's appeal is untimely.
2. The Department may continue to certify the remaining FS overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund.

THEREFORE, it is

ORDERED

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 4th day of June, 2015

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 4, 2015.

Brown County Human Services
Public Assistance Collection Unit