



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FTI/166020

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Ashland County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 18, 2015, at Ashland, Wisconsin.

The issue for determination is whether the department may intercept the petitioner's income tax refund to recover an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of the state of Washington.
2. The petitioner receives approximately \$1,000 per month in per capita payments from her tribe. She did not report these when seeking FoodShare benefits.

3. Following a FoodShare review conducted in April 2014, the county agency determined that the petitioner received \$23,732 in FoodShare that she was not entitled to from May 1, 2008, through May 1, 2014. It notified her of the alleged overpayment on July 11, 2014. She did not appeal this decision.
4. The agency sent the petitioner a repayment agreement on August 4, 2011 requesting \$20 per month beginning August 25, 2014. She did not make a payment in August 2014.
5. The petitioner's FoodShare allotment was reduced by 10% each month from September through November 2014 to recover her overpayment. Her case closed at the end of November 2014.
6. The agency sent her a repayment agreement on December 2, 2014, requesting \$20 payments each month. She did not make any payment in December 2014 or January 2015, but she made five \$20-payments from February through May 2015.
7. The county agency notified the petitioner on May 15, 2015, that it would intercept her income tax refund to recover her overpayment.

DISCUSSION

State FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). The department may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. The Division of Hearings and Appeals “may limit the scope of the hearing to exclude issues that...could have been presented at a prior opportunity for hearing.” Wis. Stat. § 49.85(4)(b).

The petitioner agency seeks to intercept the petitioner's tax refund to recover a \$23,732 FoodShare overpayment that occurred from May 1, 2008, through March 31, 2014, because she did not report the approximately \$1,000 she received each month from her tribe in per capita payments. *Exhibit 2*. The agency notified her of this on July 11, 2014. She had 90 days to appeal but did not. *See* Wis. Admin. Code, § HA 3.05(3). Because she had a prior opportunity to challenge the overpayment, she cannot do so now. Therefore, the only issue is whether the department can intercept her tax return.

The department generally does not intercept refund from those who have complied with repayment agreements. Both sides presented evidence concerning the petitioner's diligence in repaying the claim. The department concedes that she has generally made her payments but that she was late or missed at least three. The petitioner contends that she tried to make all of the payments but that she could not figure out who to talk to in order to do so. I have no doubt that dealing with the various agencies is confusing, and, based upon the evidence before me, I do not doubt that the petitioner made a good-faith effort to repay the claim on time.

Nevertheless, I must uphold the department's decision to intercept her tax refund because there is no statute, administrative code provision, or written policy that limits the department's right to take this action, even if all payments had been made on time. As far as I can tell, the department's decision to forbear attempts to intercept the tax refunds of those who are making payments is an informal one. Although it cannot apply even informal policies arbitrarily, as an administrative law judge I have no equitable powers that would allow me to consider the fairness of a situation. Instead, I must rely upon the law as it is written. Because there is no written law that limits the department's power to intercept the petitioner's tax refund, I must allow it to do so.

CONCLUSIONS OF LAW

The department may intercept the petitioner's income tax refund to recover an overpayment of FoodShare.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 1st day of July, 2015

\sMichael D. O'Brien
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 July 1, 2015.

Ashland County Department of Human Services
Public Assistance Collection Unit