FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FTI/166096

PRELIMINARY RECITALS

Pursuant to a petition filed May 19, 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 in regard to FoodShare benefits (FS), a hearing was held on June 09, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On November 23, 2011, the Petitioner filed an appeal with the Division of Hearings and Appeals requesting a hearing regarding the agency's reduction of her FS benefits effective December 1, 2011. The case was designated as DHA Case No. FOO/136945. Benefits were continued to the Petitioner pending a decision by DHA. A hearing was held on January 19, 2012. A decision was

issued on January 30, 2012 finding that the agency had properly determined the Petitioner's FS benefits. The decision informed the Petitioner of the right to file a request for a rehearing within 20 days of the date of the decision and the right to file a circuit court appeal within 30 days of the date of the decision.

3. On August 26, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals requesting a hearing on the agency's action to discontinue FS benefits effective September 1, 2013. The case was designated as DHA Case No. FOO/151643. Benefits were continued to the Petitioner pending a decision by DHA. A hearing was held on September 25, 2013. The record was held open for 15 days post-hearing to allow additional evidence to be submitted. Additional evidence was submitted by the Petitioner. A decision was issued on October 22, 2013. The ALJ found the agency had properly determined the Petitioner's income and medical expenses and had properly determined that the Petitioner's household income exceeded the program limit. The Petitioner's appeal was dismissed. The decision informed the Petitioner of the right to file a request for a rehearing within 20 days of the date of the decision and the right to file a circuit court appeal within 30 days of the date of the decision.

4. On October 8, 2014, the agency issued notices of FS overpayments to the Petitioner notifying the Petitioner that the agency was seeking to recover an overissuance of FS benefits in the amount of $1,415 for the period of December 1, 2011 – February 29, 2012 and $428 for the period of August 1 – 31, 2013. The notices were mailed to the Petitioner at his address on [redacted]. The notices also inform the Petitioner of the right to appeal the overpayments by filing a request for a hearing with the Division of Hearings and Appeals within 90 days of the date of the notice.

5. On October 10, 2014, the agency issued a letter to the Petitioner notifying the Petitioner that the agency intends to recover an overissuance of FS benefits. The letter was mailed to an incorrect street address. The letter noted that the overpayment is based on the continuance of FS benefits during previous appeals in DHA Case Nos. FOO/136945 and FOO/151643 which were dismissed by DHA.

6. On December 2, 2014, January 5, 2015 and February 3, 2015, the agency issued dunning notices to the Petitioner.

7. On May 15, 2015, the agency issued a tax intercept notice to the Petitioner informing him that the agency may intercept state taxes for an unpaid public assistance debt in the amount of $1,843.

8. On May 19, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A. Overpayment Action

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. The federal regulations governing FoodShare benefits require an appeal of a negative action by an agency involving FS benefits be filed within 90 days of the date of the agency's action. 7 CFR § 273.15(g).

Federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). The federal regulation requires that the agency 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.

In this case, the Petitioner filed a request by phone for a hearing regarding the FS overpayments. The overpayment notices were issued by the agency on October 8, 2014. The deadline for filing an appeal concerning the overpayments was January 6, 2015. The notices of October 8, 2014 were mailed to the correct address. Though the letter of October 10, 2014 was mailed to the wrong street number, the Petitioner's wife testified that a neighbor brought the letter to them. The Petitioner's wife testified that she could not be sure if she received the October 8, 2014. Without any additional evidence, I must conclude that the properly addressed notices of October 8, 2014 were delivered to the Petitioner.

Also, the Petitioner does not agree with the DHA decisions underlying the reason for the Foodshare overpayment. Specifically, the overpayments are due to the continuation of benefits during previous Foodshare appeals in DHA Case Nos. FOO/136945 and FOO/151643. The decision in FOO/136945 was issued in 2012 and the decision in FOO/151643 was issued on October 22, 2013. The time for requesting a rehearing (20 days after the date of the decision) or a circuit court appeal (30 days after the date of the decision) on those decisions has expired.

With regard to the underlying basis of the FS overpayments, the Petitioner's appeal is not timely and I have no jurisdiction to rule on the merits of the overpayments.

B. Tax Intercept Action

An appeal of a tax intercept notice must be filed within 30 days. Wis. Stats., §49.85. The Petitioner's appeal of the tax intercept action is timely.

An agency 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 amount it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. Federal regulations state that those responsible for repaying the overpayment include "[e]ach person who was an adult member of the household when the overpayment…occurred." 7 CFR § 273.18(a)(4)(i). The hearing is limited "to exclude issues that…could have been presented at a prior opportunity for hearing." Wis. Stat. § 49.85(4)(b).

In this case, the Petitioner had a prior opportunity to contest the basis of the overpayment. Thus, the hearing in this case is limited to whether the agency properly issued the tax intercept based on an unpaid public assistance debt.

At the hearing, the agency established that the Petitioner has an unpaid public assistance debt of $1,843 based on the continuation of FS benefits during pending appeals which were later dismissed. The agency properly issued notices of the overpayments and properly issued dunning notices to the Petitioner. Thus, I conclude the agency properly initiated a tax intercept action against the Petitioner.

As dicta, I note that the Petitioner's wife expressed concerns at the hearing regarding additional evidence she had submitted post-hearing in Case No. FOO/151643 and whether the ALJ had received and considered her evidence. I reviewed the decision and note that the ALJ discusses additional medical expense information that he received post-hearing. He included a thorough discussion in the decision about why he concluded that the agency properly considered the expenses in their determination of FS benefits.

A note to the Petitioner: At the hearing, the Petitioner's wife also indicated that she wishes to appeal the agency's most recent determination regarding her FS benefits impacting benefits beginning May 1, 2015. **A separate appeal file has been opened and the Petitioner/Petitioner's wife will receive a notice of hearing in the mail from DHA for that matter.**

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely with regard to FS overpayments issued by the agency on October 8, 2014.

The agency may intercept the petitioner's federal income tax return to recover the overpayment of FoodShare described in this decision.

THEREFORE, it is **ORDERED**

That 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 Milwaukee,
Wisconsin, this 14th day of July, 2015

\sDebra Bursinger
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 July 14, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit