



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/168989

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 15, 2015, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly implemented a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Debbie DeBruin

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. On September 11, 2014 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$2,454.00 overpayment from February 1, 2014 through July 31, 2014.

3. On October 2, 2014 the agency sent Petitioner a repayment agreement.
4. On October 27, 2014 the agency received a signed repayment agreement from the petitioner. The petitioner agreed to a \$100 per month payment plan.
5. The petitioner made his monthly payments through April 2015. April 10, 2015 was the petitioner's last payment. He has made no payments since that date.
6. On June 2, 2015, July 2, 2015, and August 4, 2015 the agency sent the petitioner dunning notices reminding him about the \$1,599.00 overpayment balance he needed to repay.
7. On September 11, 2015 the agency sent the petitioner a notice, indicating that it may intercept any tax refund to which he might be entitled to satisfy the \$1,599.00 balance on the FS overpayment.
8. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on September 28, 2015.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

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 FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services 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

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11. In this case the petitioner's appeal is timely.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

The petitioner sought to have a hearing because he is [REDACTED]. He is currently at the [REDACTED] [REDACTED] with a pending criminal case. He does not know what his sentence will be on his criminal case. His concern is that he will have to go to prison. While in prison, he will not be able to pay his debts, and upon his release his credit will be ruined. While I understand the petitioner's concern, I am not aware of any provision that allows a person to hold a public assistance debt in abeyance while he or she is [REDACTED]. My determination in this case is limited to whether the agency correctly implemented a tax intercept. The petitioner agreed to a payment plan, made some payments on the payment plan, he then became [REDACTED] and quit making payments. At that point the agency issued three dunning notices followed by a notice of tax intercept. Thus, the agency correctly implemented a tax intercept.

As a practical matter, I do not know what information if any the Public Assistance Collection Unit (PACU) reports to the credit bureaus. During the hearing, the agency representative provided the contact information for the PACU. The petitioner may contact the PACU with his specific questions.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept.

THEREFORE, it is

ORDERED

That the petition 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.

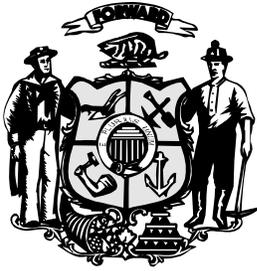
APPEAL TO COURT

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 16th day of October, 2015

\sCorinne Balter
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 October 16, 2015.

Outagamie County Department of Human Services
Public Assistance Collection Unit