



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/169539

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 10, 2015, at Appleton, Wisconsin.

The issues for determination are whether the agency correctly held the Petitioner liable for an overpayment incurred by his mother and whether the agency correctly implemented a tax intercept.

NOTE: The record was held open until November 16, 2015, to give the Petitioner an opportunity to submit the one notice he timely received, and to give the agency an opportunity to submit copies of the dunning notices.

The dunning notices have been marked as Exhibit 8 and the notice submitted by Petitioner has been marked as Exhibit 9.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Lori Garceau, Economic Support Manager
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner's birthday is in [REDACTED]. As such he turned 18 years old in [REDACTED]. (Testimony of Petitioner)
3. Between November 1, 2014 and July 2015, the Petitioner lived with his mother at an address on [REDACTED]. (Testimony of Petitioner.)
4. On March 26, 2015, the agency sent the Petitioner a notice indicating that he was overpaid Foodshare benefits in the amount of \$2,224.00 for the period of November 1, 2014 through February 28, 2014. The notice was sent to the mother's address on [REDACTED] address. (Exhibit 5)
5. Petitioner's mother was the primary person on the subject FoodShare case. (Exhibit 2)
6. On May 5, 2015, June 2, 2015, and July 2, 2015, the agency sent the Petitioner dunning notices, to remind him about the overpayment. The notices were sent to the mother's address. (Exhibit 8)
7. On September 2, 2015, the agency sent the Petitioner a repayment agreement. The repayment agreement was sent to the mother's address. (Exhibit 6)
8. On October 16, 2015, the Public Assistance Collections Unit sent the Petitioner a notice advising him that his state tax refunds would be intercepted to satisfy the overpayment. The notice was sent to the mother's address, but was forwarded to the Petitioner's current address. (Exhibit 7; testimony of the Petitioner)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 21, 2015. (Exhibit 1)

**DISCUSSION***Is the Petitioner Liable for the Subject Overpayment?*

The Petitioner does not dispute the fact that his mother caused an overpayment of benefits. However, the Petitioner disagrees with the agency's determination that he is liable for the overpayment.

The federal regulation concerning FoodShare overpayments requires the State agency to 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.

Further, "all adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance...Liability for a Foodshare overpayment is not split among liable parties. Liable parties are responsible for 100% of the overpayment until the full debt is repaid in full." *FSH §7.3.1.2*

"The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking."

## 7 CFR §273.18(a)(4)(i)

The Federal FoodShare regulations define FoodShare household composition as follows:

*General household definition.* (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who **live** together and customarily purchase food and prepare meals together for home consumption.

*7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

The Petitioner was 18 years old and part of his mother's household when his mother caused an overpayment of FoodShare benefits to occur. Consequently, the agency correctly determined that he is liable for that overpayment of benefits.

*Did the Agency Correctly Implement a Tax Intercept?*

In order for the agency to utilize a tax intercept, it must follow several steps.

First, 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.* The Petitioner testified that he did not receive any of these documents before filing his appeal.

The agency sent the Petitioner a Notification of FoodShare Overissuance and an overissuance worksheet on March 26, 2015. These were sent to the Petitioner at his mother's address, while he was still living with her. Thus, there is a presumption that he received the overpayment notice and worksheet.

The agency also sent the Petitioner the repayment agreement at his mother's address in September 2015, but he did not live at that address anymore. As such, the Petitioner did not receive the repayment agreement. Because the Petitioner did not receive the repayment agreement, the agency may not utilize a tax intercept at this time.

The agency will have to rescind the tax intercept, until such time as it provides the Petitioner with an opportunity to enter into a repayment agreement.

It should be noted, that based upon the documentation provided at the hearing, the dunning notices issued in May, June and July 2015 were issued in error, because they were issued before the agency mailed a repayment agreement to the Petitioner. (See *FoodShare Wisconsin Handbook, §7.3.1.8.* )

If the Petitioner would like to avoid the interception of his taxes, it would behoove him to enter into a repayment agreement and keep current with the monthly payments.

**CONCLUSIONS OF LAW**

1. The Petitioner is liable for the subject overpayment.
2. The agency did not correctly utilize a tax intercept.

**THEREFORE, it is**

**ORDERED**

That the agency rescind the October 15, 2015 tax intercept notice. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

In all other respects, 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**

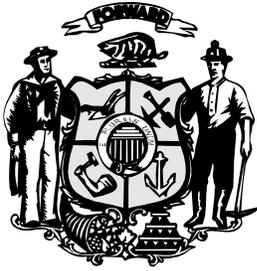
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 8th day of December, 2015.

---

\sMayumi M. Ishii  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 8, 2015.

Manitowoc County Department of Human Services  
Public Assistance Collection Unit