



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FTI/170394

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Douglas County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2015, at Superior, Wisconsin.

The issue for determination is whether the petitioner's tax refund may be intercepted to recover an overpayment of FoodShare assessed against his father's household that occurred when he was not in that household.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

|

Respondent:

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

By: [Redacted signature]

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Minnesota.

2. The county agency seeks to intercept the petitioner's income tax refund to recover an \$816 overpayment of FoodShare that his father's household received in 2012 and 2013.
3. The petitioner was incarcerated during the period of the 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). Those responsible for paying an overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). 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.

The facts are not entirely clear, but the county agency has been recovering an overpayment of FoodShare from the petitioner's father that he incurred in 2012 and 2013. Now, it seeks to also recover the overpayment from any tax refund the petitioner receives. The problem is that the petitioner was in prison when the overpayment occurred and thus could not have been a member of his father's household. A note added to the top of the agency's appeal summary by the Public Assistance Collections Unit concedes that the petitioner is not liable under these circumstances: "PACU has determined Petitioner is not liable due to incarceration." Although no one testifying was sure how the overpayment occurred, based upon past experience, its likely cause was that the petitioner's father did not report that the petitioner no longer lived with him. Thus, if the petitioner had been in the household, no overpayment would have occurred, and he still would not be subject to having his tax refund intercepted.

PACU has probably ensured that the overpayment is not collected from the petitioner. But, to be safe, I will remand this to the county agency to confirm that the necessary steps have been taken.

CONCLUSIONS OF LAW

The petitioner is not liable for any overpayment of FoodShare that occurred in 2012 or 2013 in his father's household because he was not in the household in which the overpayment occurred.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to take all steps necessary to remove from the petitioner's record any finding that he was overpaid FoodShare in 2012 and 2013 as part of his father's household and to end any attempt to recover that overpayment from him in any manner, including by intercepting his income tax refund.

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 21st day of January, 2016

\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 January 21, 2016.

Douglas County Department of Human Services
Public Assistance Collection Unit