



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/172062

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a FoodShare (FS) overpayment, a hearing was held on March 22, 2016, at Madison, Wisconsin, with the ALJ appearing by telephone.

The issue for determination is whether the PACU correctly used a tax intercept to recover an FS overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. In November, 2012, petitioner was notified that his FS household was overpaid \$3,666 in FS between February and July, 2012, claim no. [Redacted]. Payments were made through recoupment, but at some point payments stopped for a period of time. On July 17, 2015, the

PACU notified petitioner that it intended to intercept his tax refund to recover the overpayment. Petitioner did not appeal that notice.

3. On October 28, 2015, the county agency sent petitioner a series of notices informing him that his household was overpaid a total of \$8,892 in FS between June, 2013 and April, 2015, claim nos. [REDACTED] and [REDACTED]. On the same date the agency sent notices informing petitioner that he was overpaid Medical Assistance (MA) totaling \$4,357, claim nos. [REDACTED], [REDACTED], and [REDACTED]. Petitioner did not appeal the claims.
4. In November, 2015, petitioner agreed to pay \$20 on the claims. Nevertheless, on February 12, 2016, the PACU sent a notice to petitioner informing him that it intended to utilize a tax intercept to recover the \$8,892 FS overpayment calculated in October, 2015.
5. The PACU intercepted petitioner's 2015 tax refund. The intercept was applied to the 2012 FS overpayment, reducing the balance to \$0.

### DISCUSSION

Wis. Stat., §49.85(2)(a), 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 overpayments of general relief benefits, FS, and Medical Assistance. 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

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

The PACU properly utilized the tax intercept to recover the 2012 overpayment. Petitioner did not contest the overpayment, and in July, 2015 the PACU notified him that it intended to use the tax intercept. Even though petitioner later agreed to make payments, there is nothing in the law preventing the agency from utilizing the tax intercept as well.

Petitioner also questioned the use of the tax intercept notice issued in February, 2016 concerning the October, 2015 claims. He argued that he agreed to make payments on those claims and thus the agency should not use the tax intercept. When a new debt is calculated for a household that already has an older, delinquent debt, the PACU takes the position that the new debt is immediately delinquent. See Exhibit 5, page 3 and Exhibit 7A.

Typically the PACU will not utilize a tax intercept if a person agrees to make payments before the claim becomes delinquent. See FS Handbook, Appendix 7.3.2.10. However, there is no requirement in the statute that the agency make such an allowance. In addition, there is nothing preventing the agency from creating the policy that new claims are immediately delinquent if the same household has older,

delinquent claims. I conclude, therefore, that the PACU could issue the tax intercept notice for the newer claims even though petitioner agreed to make monthly payments on them.

**CONCLUSIONS OF LAW**

1. The PACU correctly utilized a tax intercept to recover a delinquent FS overpayment dating back to 2012.
2. Nothing in state law prevents the PACU from declaring a new overpayment immediately delinquent when a household already has an older, delinquent overpayment claim.

**THEREFORE, it is ORDERED**

That the petition for review is hereby 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 24th day of March, 2016

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\sBrian C. Schneider  
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 March 24, 2016.

Dane County Department of Human Services  
Public Assistance Collection Unit