



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/172821

PRELIMINARY RECITALS

Pursuant to a petition filed March 16, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept petitioner’s tax refund to recover a FoodShare (FS) overpayment, a hearing was held on April 19, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the PACU may use 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: 
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of . He formerly lived in Milwaukee and received FS there.
2. On September 26, 2012, the agency notified petitioner that he was overpaid \$1,600 in FS from November 1, 2011 through June 30, 2012, claim no. . At that point petitioner was not receiving FS. The agency sent petitioner a repayment agreement and three dunning notices between October 2, 2012 and January 3, 2013. Petitioner did not respond.

3. Petitioner reapplied for FS on January 8, 2013, and the agency began to recoup the overpayment from current FS effective February 1, 2013.
4. Petitioner's FS closed effective January 1, 2014, and then he reapplied. On January 17, 2014 the PACU sent petitioner a notice informing him that it intended to utilize a tax intercept to recover the remaining overpayment. The notice was sent to the address petitioner used when he reapplied for FS that month.
5. Petitioner filed this appeal on March 16, 2016. There is no record of any earlier appeal. The overpayment has an outstanding balance of \$994.

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 federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error..." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner argued that he was not responsible for the overpayment, and that another person used the FS while he was incarcerated in 2012. However, I have no authority to rule on the merits of the overpayment claim at this time. Petitioner was notified about the overpayment and he did not appeal timely. The agency recouped over \$600 from current FS and petitioner did not appeal. In January, 2014 the PACU sent a tax intercept notice to petitioner's then current address and he did not appeal. An appeal of a tax intercept notice must be filed within 30 days. Wis. Stat., §49.85(3)(a)2.

Petitioner also testified that he requested information about appealing a number of times. I checked case notes back to September, 2012. In July, 2013 he inquired about the recoupment and was told that if he disagreed he could appeal. Then in January, 2014 he contacted the agency after receiving a notice about the overpayment (possibly the tax intercept notice?) and again was told that he could request a fair hearing. A blank fair hearing form was sent to his current address. Both of those contacts were more than

90 days after both the overpayment notice and the beginning of recoupment, so even if petitioner had followed up with an appeal it would have been untimely.

CONCLUSIONS OF LAW

Petitioner's appeal of a \$1,600 FS overpayment was untimely, and thus the agency may use all legal means, including tax intercepts, to recover it.

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 21st day of April, 2016

\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 April 21, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit