



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FTI - 174473

PRELIMINARY RECITALS

On May 19, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to challenge a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS). The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether the respondent correctly instituted a tax intercept.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By: [Redacted]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Michigan.
2. On July 20, 2010, the agency sent the Petitioner Notifications of FoodShare Overissuance, Claim Numbers [Redacted] indicating that her household was overissued

- FoodShare benefits in the total amount of \$1,892.77 for the period of July, 2009 to March 2010. (Exhibit 2)
3. The agency sent Petitioner a repayment agreement on August 3, 2010. (Exhibit 2)
 4. On November 2, 2011, April 3, 2012, September 4, 2013, and March 4, 2014, the agency sent Petitioner second, third, fourth, and fifth repayment agreements, respectively. (Exhibit 2)
 5. The agency sent the Petitioner dunning notices (reminders about the debt) on September 2, 2010, October 4, 2010 and November 2, 2010. (Exhibit 2)
 6. On November 11, 2011, the agency sent the Petitioner a notice of State tax intercept, advising her that, “Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt.” (Exhibit 2)
 7. Petitioner’s tax refunds were intercepted twice and applied to the outstanding overpayment. \$31.00 still remains due and owing.
 8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 19, 2016. (Exhibit 1)

DISCUSSION

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.

The Petitioner filed an appeal because she does not think she should be held liable for the overpayment underlying the tax intercept, because she alleges that she was not aware of the overpayment. She notes that she was incarcerated in November of 2011.

FoodShare regulations provide that a person cannot receive FS in two states. 7 C.F.R. §272.4(e)(1). State agencies must establish a system to assure that individuals participate in only one jurisdiction in a month. *Id.* The *FS Handbook*, Appendix 3.4.1 tells Wisconsin workers about the prohibition of duplicate benefits, and that the Wisconsin worker should contact the former state to verify the FS end date in the former state. Wisconsin will not issue FS in this state until the former state’s benefits are closed. In the present case, the respondent determined in 2010 that petitioner’s son, a member of petitioner’s Wisconsin FS household, was also receiving FS benefits in Michigan.

While the petitioner wasn’t technically the household member receiving duplicate benefits, FS regulations state that “All adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred....” *FSH* §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)

Based upon the foregoing regulations and policy, the Petitioner is liable for the underlying Foodshare overpayment, because she was an adult member of the food unit.

With regard to the underlying overpayment, the Petitioner’s appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's May 19, 2016, appeal was filed well beyond 90-days from the date of the July 20, 2010, overpayment notice. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. 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 date of the tax intercept notice was November 11, 2011. As such, Petitioner needed to file her appeal by December 11, 2011. Petitioner did not file his appeal until May of 2016. As such, her appeal is untimely and there is no jurisdiction to hear the merits of his appeal of the state tax intercept. Petitioner did testify that she was incarcerated in November of 2011, however, she provided no confirmation of this assertion, nor any indication of the length of the incarceration. Furthermore, repayment agreements and dunning notices were sent on numerous occasions over the preceding 5 years, and I note that petitioner's tax refunds were intercepted twice since the overpayment was assessed. Petitioner's wait to appeal has deprived this office of jurisdiction to consider her appeal.

CONCLUSIONS OF LAW

1. Petitioner is liable for any FoodShare overpayment to her household/food unit.
2. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
3. Petitioner's appeal of the State Tax Intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

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.

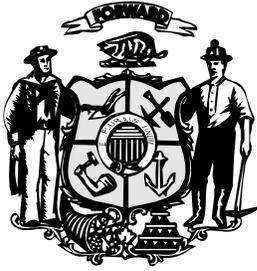
APPEAL TO COURT

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, **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 18th day of July, 2016

\s _____
Peter McCombs
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 July 18, 2016.

Public Assistance Collection Unit

Public Assistance Collection Unit