



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION
Case #: FTI - 174602

PRELIMINARY RECITALS

On May 24, 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 Brown County Human Services regarding FoodShare benefits (FS). The hearing was held on June 21, 2016, by telephone.

The issue for determination is whether the tax intercept notice issued on 3/11/16 was issued correctly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
[REDACTED] 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Petitioner was dating a woman named [REDACTED]. [REDACTED] included petitioner on a FS case. The case was determined to be subject of an overpayment claim for the period from 12/1/12 to 12/31/12 in the amount of \$353, and from 1/1/13 to 12/31/13 in the amount of \$4,394.
3. The related overpayment notices were sent on 10/1/15. The notices were sent to [REDACTED].
4. Dunning notices were sent to the same address.
5. A tax intercept notice was issued on 3/11/16.
6. Petitioner requested a hearing on 5/24/16.

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 overpayment of general relief benefits, overissuance of FS, and Medical Assistance payments made incorrectly.

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's policy concerning tax intercepts is set out in the FoodShare Wisconsin Handbook, App. § 7.3.2.10. A tax intercept is used if a person becomes delinquent in repaying an overpayment. Before utilizing the intercept, the agency must send three dunning notices that offer the person the opportunity to agree to a repayment schedule. The Handbook specifies that these notices must be "received." See *FS Handbook* at § 7.3.2.10 ("To use tax intercept, the person must have received three or more dunning notices....").

In this case, the petitioner's liability is based on his presence in the household of [REDACTED] during the period of the overpayment. But, petitioner claims that he broke up with [REDACTED] and moved to [REDACTED] in 2014. The notices were all sent to the [REDACTED] address. But, petitioner was living somewhere else. There is no evidence that petitioner received the Dunning notices and, thus, the tax intercept was issued incorrectly.

The record suggests that petitioner never received notice of the debt and never had an opportunity to defend against the overpayment action when the OP notice was sent (with appeal rights) in October 2015.

CONCLUSIONS OF LAW

1. Prior to having his tax refunds intercepted to recover an FS overpayment, petitioner did not have an opportunity for a hearing on the merits of the overpayment because the agency did not notify him of the claim.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind the tax intercept notice and claim, and shall issue new overpayment notices to petitioner and provide him with an opportunity to appeal the overpayment claim on the merits. The agency shall take the action within 10 days of this decision.

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 _____ day of July, 2016

\s _____
John P. Tedesco
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 21, 2016.

Brown County Human Services
Public Assistance Collection Unit