



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FTI - 175596

PRELIMINARY RECITALS

Pursuant to a petition filed on July 18, 2016, under Wis. Stat. § 46.85Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Dept. of Human Services to the referral of the petitioner for state income tax refund intercept to recover overpaid intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare benefits (FS), a hearing was held on August 24, 2016, by telephone. At the request of the county agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect a FS overpayment the county agency has correctly referred the petitioner for state income tax refund intercept certification after three dunning letters were issued.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County. He was an adult member of a FS. Petitioner is years old and is certified for MA household headed by his then-wife, [Redacted], during

2. at least the period of October, 2012, through May 31, 2013.
3. On October 28, 2013, the county agency informed [REDACTED] and the petitioner by individually addressed Notifications of FS Overissuance, that they had been overpaid \$5,269 in FoodShare benefits in the period of October, 2012, through May 31, 2013, due to a client error in failing to report earned income; that they were jointly liable for this debt; that they had 90 days to appeal if they disagreed; and the address of the Division of Hearings & Appeals as the place to which to direct an appeal.
4. Neither petitioner nor [REDACTED] filed an appeal contesting the correctness of the FS overpayment determination in FS Claim No. [REDACTED] for \$5,269.
5. The Department soon after implemented an ongoing recoupment from [REDACTED] still open FS household's benefits and recouped \$1,202 on the debt in this method of recovery.
6. [REDACTED] stopped receiving FS in June, 2015, and continuing through October, 2015, when she again began receiving FS. See, Exhibit F, attached FS Disbursement History.
7. When recoupment stopped, the agency issued a dunning letter to the petitioner on June 2, 2015, reminding him that a Repayment Agreement had previously been sent to him (in October, 2013, see Exhibit A3) asking him to repay this public assistance debt; that the debt was now a balance of \$4,424; and requesting that he return the repayment agreement and begin to make payments. See, Exhibit A4.
8. The agency issued a second dunning letter to the petitioner on December 2, 2015, reminding him that a Repayment Agreement had previously been sent to him (in October, 2013, see Exhibit A3) asking him to repay this public assistance debt; that the debt was now a balance of \$4,307; and requesting that he return the repayment agreement and begin to make payments. See, Exhibit A4.
9. The agency issued a third dunning letter to the petitioner on January 5, 2016, reminding him that a Repayment Agreement had previously been sent to him (in October, 2013, see Exhibit A3) asking him to repay this public assistance debt; that the debt was now a balance of \$4,277; and requesting that he return the repayment agreement and begin to make payments. See, Exhibit A4.
10. On January 26, 2016, the petitioner apparently returned an executed repayment agreement and began paying \$20 per month installments, which he paid on January 26, January 28, February 23, March 11, April 22, May 26 and July 6, 2016. Apparently, [REDACTED] was making these payments on his behalf because she asserts he was unaware of the FS overpayment and did not cause it. The present balance due at appeal was \$3,927. See, Exhibit C2, run on 8/17/16.
11. On July 15, 2016, the Wisconsin Department of Children and Families, by the Public Assistance Collections Unit, issued a state income tax refund intercept notice to the petitioner informing him that the Wisconsin Department of Revenue would act to intercept any state income tax or homestead credit that he would be entitled to receive in the future, if any, to defray a public assistance debt of \$3,957 in overpaid FoodShare benefits in the period of October, 2012 – May, 2013, Claim No. [REDACTED].
12. On July 18, 2016, the petitioner filed an appeal contesting the state income tax refund intercept certification.
13. The petitioner and [REDACTED] both fully admitted that the FoodShare overpayment debt was a matter of legal record that they had never appealed, and did not now contest. Further, they pointed to no error in the computation of the original overpayment or the attribution of any of the repayments made by recoupment or voluntary cash repayment. Rather, they asserted that the petitioner had executed a Repayment Agreement and was timely making his payments under the agreement and he should not have been subjected to the state income tax refund interception certification; and he seeks to have it voided.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. See 45 C.F.R. § 233.20(a)(13)(I) (...Overpayment means a financial assistance payment received by or for an assistance

unit for the payment month which exceeds the amount for which that unit was eligible....The State must take all reasonable steps necessary to promptly correct any overpayment.). See also, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. See, Wis. Stat. § 46.85.

Here, the petitioner concedes the correctness of the FS overpayment against the household. As does his (former) wife, [REDACTED]. His representative ([REDACTED]) asserts that the tax intercept should not be pursued because he has returned a repayment agreement and made seven payments roughly within the seven months (two in January, none in June) under the unilateral agreement he returned. In short, he desires to avoid the impact of a state income tax refund intercept action. She also asserts that he has cognitive deficits and was unaware of what caused the original overpayment, and he should not be subjected to recovery in this method.

The county replies that the petitioner received three dunning letters, and only then, several weeks later, did he send in a Repayment Agreement and start making voluntary monthly \$20 payments. They assert that he is thus too late in agreeing to pay, and the Department is now free to use any and all lawful recovery means at its disposal. State income tax refund intercept is one of those such methods.

FS policy provides, in the parts relevant here, as follows:

7.3.1.2 Liability

7 CFR 273.18(a)(4)(i)

All adults or emancipated minors who were included in the food unit or should have been included in the food unit at the time the overpayment occurred are liable for the repayment of the overpaid FoodShare benefits. If a liable member moves to another food unit, responsibility of the overpayment is maintained and follows that member to the new food unit.

Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the debt is repaid in full.

7.3.2.10 Tax Intercept

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overpayment.

To use tax intercept, the overpayment must be considered delinquent. Delinquency is defined as failing to make the monthly payment by the due date three times over the life of the debt. The collection system sends three dunning, or past due, notices for each of the three missed payments. The debt must meet all six of the criteria below:

	State	Federal
1	Valid and legally	Valid and legally

	enforceable	enforceable
2	All error types	All error types
3	\$20	\$25
4	At least 30 days after the third notification of the tax intercept.	At least 120 days from notification of overpayment.
5	Free from any current appeals.	Free from any current appeals.
6	Incurred by someone who is not currently in bankruptcy.	Incurred by someone who is not currently in bankruptcy.

7.3.2.11 Notice & Review

State tax intercept notices include a 30 day fair hearing right. The Division of Hearings and Appeals conducts the fair hearing. Federal intercept notices have a 60 day administrative review process. The Public Assistance Collections Unit conducts the administrative desk review. The member must provide evidence showing the claim is not past due, or is not legally enforceable. If the member cannot provide that evidence, the case will be sent for intercept.

The case is not subject to the tax intercept while under review or appeal.

7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FoodShare Wisconsin Handbook, §§ 7.3.1.2, 7.3.2.10, 7.3.2.11, 7.3.2.12.

The so-called "three dunning letter" policy is an administrative policy created by the Department. I can find no law that requires it. Rather, the law provides for interception upon issuance of a 30 days advance notice, as occurred here.

More importantly, all three dunning letters were issued here, and issued to the petitioner. Once those events occur, "...he or she is subject to both tax intercept and monthly repayment." *Ibid.*, at 7.3.2.12. He

may continue to make the payments to defray the debt, but he is left wide open to all collection methods the Department decides to employ that are allowed by law. Simply put, he waited too long to exercise the right to reach a Repayment Agreement that would avoid tax intercept and other methods, and now, he is subject to that method of overpayment recovery.

Based upon the foregoing policy statement, I can only conclude that the Department is correct, and the instant appeal must be dismissed. The Department may utilize state income tax refund intercept against the petitioner to collect this public assistance debt. He has sat upon his rights to voluntarily agree to pay for too long, and as a consequence, he has lost those rights in this context.

CONCLUSIONS OF LAW

That the county agency has correctly certified the petitioner to the Wisconsin Department of Revenue for state income tax refund intercept to recover a public assistance debt, i.e., FS Claim # [REDACTED], with a present balance due of \$3,927.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, 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, **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 2nd day of September, 2016

\s _____
Kenneth D. Duren
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 September 2, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit