



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION  
Case #: FTI - 200523

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2020, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane Cty. Dept. of Human Services regarding FoodShare benefits (FS), a hearing was held on December 8, 2020, by telephone.

The issues for determination are (1) whether petitioner timely appealed the FoodShare Overpayment, and (2) whether the agency correctly issued the notice of state 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, WI 53703

By:   
Dane Cty. Dept. of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Adams County. He is part of a FS group that includes  and their two children.

2. By letter dated March 16, 2020, the agency sent petitioner and [REDACTED] [REDACTED] separate notices of FoodShare Overpayment that indicated they received benefits not otherwise entitled to from October 1, 2019, through February 29, 2020, in the amount of \$3,230.00 for failing to report household income exceeding program limits.
3. By letter dated April 2, 2020, the agency sent petitioner and [REDACTED] [REDACTED] FoodShare Repayment Agreements.
4. Dunning notices were mailed to petitioner and [REDACTED] [REDACTED] on July 2, 2020, August 4, 2020, and September 2, 2020.
5. On October 16, 2020, notice of state tax refund intercept were issued to petitioner and [REDACTED] [REDACTED] advising that \$3,230.00, claim # [REDACTED], may be intercepted from any tax refunds or credits due.
6. All notices referenced in the Findings of Fact 2 through 5 were mailed to petitioner at his current address of [REDACTED], [REDACTED].
7. On November 16, 2020, petitioner and [REDACTED] [REDACTED] appealed.

### DISCUSSION

ALJ note: A consolidated hearing was held on December 8, 2019, to address separate notices of state tax intercept issued against petitioner (DHA case no. 200523) and his wife, [REDACTED] [REDACTED] (DHA case no. 200522). A separate written decision has been issued for [REDACTED] [REDACTED].

#### Appeal of FS Overpayment

State FS agencies must “establish a claim against any household that has received more [FS] benefits than it is entitled to receive.” 7 CFR § 273.18(a). An appeal of a FS overpayment must be filed within 90 days of the date of that action. 7 C.F.R.. § 273.15(g); Wis. Admin. Code §§HA 3.05(3)(a) and 3.03(3).

The Division of Hearings and Appeals (DHA) only has authority to review the merits of an appeal if there is jurisdiction to do so. DHA lacks jurisdiction to address the merits of a case when the appeal is not timely filed. The deadline to appeal the FS overpayment determination was June 15, 2020. Petitioner’s appeal was filed 5 months late.

Petitioner did not acknowledge receiving the notice of overpayment but also did not provide credible evidence to rebut the presumption of deliver that arose from its mailing. To overcome that presumption, petitioner must present evidence demonstrating that the notice was not actually received. This interpretation is confirmed by the following Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, *Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing *Wigmore, Evidence*2d. ed.) § 2153; 1 *Wigmore, Evidence* (2nd ed.) § 95) *Mullen v. Braatz*, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); *Solberg v. Sec. Of Dept of Health & Human Services*, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); *Hagner v. United States*, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

\*\*\*(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt.

United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2d 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 (1994).

Petitioner offered nothing to rebut this presumption other than his statement that the notices were not received. That is insufficient. The agency sent the notice to the address it had on file which is the same address petitioner confirmed as the current mailing address at the hearing. The notices were not returned to the agency as undelivered or undeliverable and there is no evidence that petitioner or his wife previously reported to the post office or their landlord any issue with receiving their mail. This ultimately leads to the presumption that the notice of overpayment was properly delivered to the petitioner's address. The claim that the notices were not received is a self-serving assertion without corroboration, and thus, carries little weight. Under the circumstances, I find that the petitioner's appeal of the overpayment was untimely. As such, DHA does not have jurisdiction to address the merits of the overpayment.

#### Appeal of Tax Intercept

With regard to the state tax intercept, Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, Food Stamps, AFDC and/or Medical Assistance payments previously made incorrectly.

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 overissuance. A person who executes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. Additionally, to pursue a tax intercept, the liable party must have received three or more dunning notices. FoodShare Handbook § 7.3.2.10. If a person has received three dunning notices, s/he is subject to both tax intercept and monthly repayment. FoodShare Handbook § 7.3.2.12.

Based on the record before me, the respondent has established that it properly complied with the rules and regulations pertaining to pursuit of a tax intercept. The petitioner has not established any error or omission on the part of the respondent in this regard. The debt remains outstanding, petitioner has not entered into and complied with a repayment agreement, and the appropriate notices were issued.

### **CONCLUSIONS OF LAW**

1. The Division of Hearings and Appeals does not have the authority to address the merits of the overpayment claim as the appeal was not timely filed.
2. The respondent may utilize a state tax intercept against petitioner to recover the FS overpayment of \$3,230.00, claim # [REDACTED].

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal 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, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, 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.

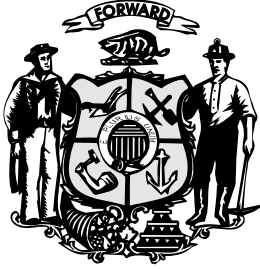
### **APPEAL TO COURT**

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 7th day of January, 2021

\s \_\_\_\_\_  
Jason M. Grace  
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 January 7, 2021.

Dane Cty. Dept. of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability