

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR10289

<p>WANDA JONES, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent.</p>	<p>FINAL DECISION AND ORDER GRANTING SUMMARY JUDGMENT</p>
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THIS MATTER comes before Beecher R. Gray, Administrative Law Judge, on a Motion to Dismiss and, in the Alternative, a Motion for Summary Judgment filed by Respondent on June 7, 2013. The motion and alternative motion were supported by affidavit and exhibits. Having reviewed the motion, the supporting affidavit, and documents of record, I make the following:

UNDISPUTED FINDINGS OF FACT

1. An overpayment to Petitioner for benefits under the Food and Nutrition Services (Food Stamp Program) of \$9,892.00 was established for the period June 23, 2005 through December 31, 2006, because of an Intentional Program Violation by Petitioner.
2. The debt for overpaid benefits was established by the Wake County Department of Social Services ("Wake County DSS") against Petitioner on May 28, 2012.
3. On May 28, 2012, a Letter of Overissuance was sent to Petitioner notifying her that Wake County DSS had determined that Petitioner or her household committed an Intentional Program Violation resulting in an overpayment of food stamp benefits in the amount of \$9,892.00. Petitioner was given 90 days in which to appeal the establishment of an overpayment against her.
4. Petitioner did not exercise these appeal rights by requesting a hearing on the establishment of the overpayment of food stamps.
5. On August 21, 2012, a Notice of Intent to Submit the Debt to the U.S. Treasury for Offset Collection was sent to Petitioner, notifying her that Wake County DSS intended to submit the debt of \$9,892.00 to the U.S. Department of Treasury for collection through the Treasury Offset Program ("TOP").

6. Appeal rights for the establishment of the debt and submission of the debt to the Treasury Offset Program were granted to Petitioner for 60 days in the Notice of Intent to Submit Debt to U.S. Treasury for Offset Collection.
7. Petitioner did not exercise her appeal rights by requesting a hearing on the establishment of the debt or the submission of the debt to the Treasury Offset Program.
8. Petitioner had several opportunities to exercise due process with the Department before filing this Petition with the North Carolina Office of Administrative Hearings. Petitioner had the right to contest the underlying amount owed to the Department when she was issued the Letter of Overissuance, and Petitioner did not exercise the right to contest the debt. Wake County DSS sent a Notice of Intent to Submit Debt to U.S. Treasury for Offset Collection, which Petitioner again failed to contest.
9. At the time of the tax intercept, the balance of Petitioner's debt was \$9,892.00.
10. As a result of Petitioner's indebtedness, Petitioner's North Carolina income tax refund in the amount of \$872.00 was intercepted on February 20, 2013.
11. As a result of Petitioner's indebtedness, Petitioner's federal income tax refund in the amount of \$6,655.00 was intercepted on March 1, 2013 by the United States Department of Treasury.
12. Upon the interception of Petitioner's 2012 State income tax refund and 2012 federal income tax refund, a balance of \$2,365.00 still is outstanding on the overpayment claim.
13. Petitioner filed an appeal in the Office of Administrative Hearings on March 27, 2013, contesting the interception of her North Carolina income tax refund for the repayment of a Food Stamp debt for which Petitioner has been identified as a responsible party.
14. Petitioner filed a response to Respondent's Motions on August 7, 2013.

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case under N.C. Gen. Stat. §150B-23 *et seq.*, and there is no question as to misjoinder or nonjoinder.
2. To the extent that the findings of facts contain conclusions of law or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels. Bonnie Ann. F. v. Callahen Indep. Sch. Dist., 835 F. Supp. 340, 342, n.1 (S.D. Tex. 1993).
3. Because Petitioner had a remaining outstanding balance of \$9,892.00 on her food stamp debt at the time her North Carolina income tax refund of \$872.00 was intercepted on

February 20, 2013, the interception was proper under the procedures detailed in N.C. Gen. Stat. § 105A *et seq.*

4. To the extent Petitioner contests the intercept by the U.S. Department of Treasury, the Office of Administrative Hearings does not have jurisdiction over the subject matter of federal agency actions and has no jurisdiction over the federal intercept. See N.C.G.S. § 150B-2 (1a) (defining “agency” as “an agency or an officer in the executive branch of the government of this State”) (emphasis added) and N.C.G.S. § 150B-2 (2) (defining “contested case” as “a dispute between an agency and another person.”).
5. Any review available to Petitioner of the underlying debt and the submission of the debt to the Treasury Offset Program should have been directed to the Wake County DSS.
6. The time to appeal the establishment of the debt and the submission to the Treasury Offset Program has expired.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that there is no genuine issue of material fact with regard to Respondent’s interception of Petitioner’s North Carolina income tax refund on February 20, 2013 in the amount of \$872.00 for the recovery of food stamp benefits overpaid to Petitioner and that Respondent is entitled to judgment as a matter of law under Rule 56 of the North Carolina Rules of Civil Procedure. Summary Judgment in favor of Respondent hereby is **GRANTED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision.** In conformity with the Office of Administrative Hearings’ Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 15th day of September, 2013.

Beecher R. Gray
Administrative Law Judge