



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/169055

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of NA.
2. Petitioner has received Wisconsin FS benefits from 2011 through June 30, 2014.
3. In January, 2012, the Petitioner completed a FS renewal and reported a Wisconsin address. He also reported he was not employed.

4. Between February, 2012 and June, 2014, Petitioner's Wisconsin FS card was not used in Wisconsin but was used only in [REDACTED], [REDACTED] and [REDACTED].
5. In May, 2012, the Petitioner completed a renewal. He reported a Wisconsin address.
6. In September, 2012, the Petitioner contacted the agency to report his card was stolen. He reported he was living in Wisconsin. He was advised to contact the police regarding his stolen card.
7. On December 6, 2012, the Petitioner contacted the agency to report a change in address to [REDACTED]. The Petitioner stated that he was in [REDACTED] to assist his sister who was ill. The Petitioner reported that his card was stolen and he needed a replacement. The Petitioner was advised that he cannot receive a Wisconsin FS card if he is living in [REDACTED].
8. On December 28, 2012, the Petitioner completed a renewal. He reported a Wisconsin address.
9. On January 3, 2013, the Petitioner reported a change in address to [REDACTED] in Milwaukee. He reported he had no income.
10. In July and December, 2013, the Petitioner called to complete a renewal. He reported a Wisconsin address.
11. On January 11, 2014, the agency received returned mail for the Petitioner. It was undeliverable to the address the Petitioner had just reported in December, 2013.
12. On May 5, 2014, the Petitioner contacted the agency. He provided a new address in Wisconsin. He stated he has family that he visits frequently in [REDACTED].
13. On March 2, 2015, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$5,554 for the period of August 1, 2013 – June 30, 2014 due to the Petitioner's failure to report a move out of state. The notice was issued to his last reported address in [REDACTED], WI. The notice also advised him of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals by June 1, 2015.
14. On May 4, 2015, June 2, 2015 and July 2, 2015, dunning notices were issued to the Petitioner at the [REDACTED] address.
15. On August 14, 2015, a notice of state tax intercept was issued to the Petitioner at the [REDACTED] address. It advised him that his unpaid public assistance debt of \$5,554 may be intercepted from state tax refunds. The notice further advised him of the right to request a hearing on the matter by filing an appeal with the Division of Hearings and Appeals within 30 days of the date of the notice.
16. On September 30, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by a county agency concerning FS must be filed within 90 days of the date of the action. 7 C.F.R., sec. 273.15(g).

At the hearing, the Petitioner testified he never received any notices because he has lived in [REDACTED] for most of the last two or three years. Petitioner provided additional testimony that was inconsistent and not credible about his card being stolen in Milwaukee and why he was unable to file a police report. He stated he thought he knew who in Milwaukee had stolen the card, was using his PIN number and was renewing his benefits every six months. However, he never reported anything to the police. When the agency pointed out that all of the benefits for the past couple of years were not used in Wisconsin but

were used in [REDACTED], [REDACTED], and [REDACTED], the Petitioner changed his story and testified that the person from Milwaukee was going to those states to use the benefits. The Petitioner testified at the hearing that he has been living in [REDACTED] for the past two or three years. When he tried to report the [REDACTED] address, he was advised that he cannot receive Wisconsin FS benefits in [REDACTED]. The evidence demonstrates that he then reported a Wisconsin address and continued to report a Wisconsin address. I do not find the Petitioner's testimony credible with regard to the stolen card. I conclude the evidence demonstrates that he continued to report a Wisconsin address while he was residing out of state.

I conclude that the agency properly issued the notice of overpayment, the dunning notices and the state tax intercept notice to the Petitioner at his last-reported address in Wisconsin. The Petitioner failed to file an appeal that was timely for either the overpayment or the tax intercept. Thus, no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely with regard to the tax intercept and the overpayment action.

THEREFORE, it is

ORDERED

That the 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, 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.

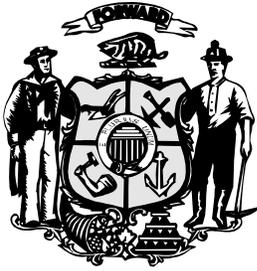
APPEAL TO COURT

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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 21st day of January, 2016

\sDebra Bursinger
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 21, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit