



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170283

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the petitioner’s appeal of the FoodShare (FS) overpayment is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Winnebago County.
2. On June 25, 2015 the agency sent the petitioner two FoodShare (FS) overpayment notices. One notice stated that she was overpaid \$569 in FS benefits for the period from March 5, 2014

through June 30, 2014. This was under claim number [REDACTED]. The second notice stated that she was overpaid \$4,644.00 in FS benefits for the period from March 1, 2013 through February 28, 2014. This was under claim number [REDACTED]. Both notices went on to state that the petitioner had until September 23, 2015 to request a Fair Hearing. These notices were sent to the correct address.

3. On November 23, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

An Administrative Law Judge can only hear cases on the merits if there is jurisdiction. There is no jurisdiction if a hearing request is untimely. The agency is required to give written notice of the negative action concerning a FoodShare (FS) overpayment. 7 C.F.R. § 273.18(e)(3)(iii). One purpose of the notice is to advise a person that he or she has 90 days from the date of the notice to submit a request for a fair hearing. 7 C.F.R. § 273.18(g), WI Admin Code §HA 3.05(3)(a), *FoodShare Wisconsin Handbook*, § 6.4.1.

The agency sent the petitioner the notices of overpayments on June 25, 2015. The notices were sent to the correct address. The agency did not receive any returned mail. The petitioner did not file her Request for Fair Hearing until November 23, 2015. This is 60 days beyond her appeal deadline. Thus, I must conclude that her request is untimely, and that I am without jurisdiction to decide the FS overpayment.

The petitioner argued that she did not receive these notices until after the appeal deadline. I do not find this testimony credible. She has not moved. When pressed she changed her testimony stating that she did not remember receiving the overpayment notices. I believe that she discounted the possibility of having to repay these overpayments, but nonetheless received the notices, and was aware of this FS overpayment.

Even if I had jurisdiction, I would find that the overpayment was correct. This overpayment was caused by the petitioner failing to report that her boyfriend, who is also the father of her children, was living with her. At the hearing, the petitioner and her boyfriend admitted that he "stayed" with her "quite a bit." Her argument was that he did not help out with bills. She presented no proof of this. However, the issue, if her appeal request were timely, would be whether or not he was in the home, not the level of contribution to household expenses. His family and her neighbors reported that he was living with her during the overpayment period. This is consistent with the petitioner's boyfriend's testimony, the petitioner's testimony, and the petitioner's statement to the investigator. For all these reasons, I would have concluded that the FS overpayment was correct.

CONCLUSIONS OF LAW

The petitioner's appeal of the FoodShare (FS) overpayment is untimely, and I am without jurisdiction to rule on the merits of the overpayment.

THEREFORE, it is

ORDERED

That the petition 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 22nd day of December, 2015

\sCorinne Balter
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 December 22, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability