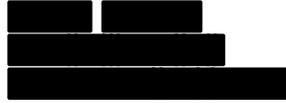




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/171004

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) in regard to FoodShare benefits (FS), a hearing was held on February 3, 2016, by telephone.

The issues for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] PARIS Agent
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On March 13, 2013, the Department mailed a Notification of FS Overissuance and worksheet to the petitioner at his last known mailing address of [Redacted], Oconto, Wisconsin. A

duplicate *Notification* was also mailed to the Milwaukee County homeless pickup address at [REDACTED], Milwaukee, as the agency had reason to suspect that the petitioner might have moved. The petitioner telephoned the Department's agent, on April 8, 2013, stating that he had received the overpayment notification, and to complain about the overpayment. The *Notification* identified FS overpayments totaling \$1,729, and advised the petitioner to file any appeal of the overpayment within 90 days.

3. The Department mailed written notice of a negative action to the petitioner's correct mailing address of [REDACTED], Milwaukee, Wisconsin on **November 13, 2015**. The negative action was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$1,241 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the November 13, 2015, notice. *See*, Exhibit 15.
4. The petitioner filed a hearing request with the Department on December 23, 2015.
5. The petitioner states that he did not promptly receive the November 13, 2015 interception notice because he sometimes experiences delays in getting transportation to [REDACTED] to check his mail. Such delays were not caused by the Department. At some point in time, he did receive the interception notice, prompting this appeal.
6. The petitioner's FS benefits have been subject to recoupment actions since 2013 in an effort to recover the overpayments. In 2013, a total of \$136 was recouped from his monthly allotments. In 2014, \$200 was recouped (at \$18 or \$19 monthly). In 2015, \$152 was recouped (\$19 monthly x 9 months). The total recoupments of \$488 reduced the amount owed by the petitioner from \$1,729 to \$1,241. *See*, Exhibit 16.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning FS eligibility or overpayment must be filed within 90 days of that determination. 7 C.F.R. § 273.15. *An appeal from a state tax refund interception notice must be filed within 30 days of the date of the interception notice.* Wis. Stat. §49.85(3)(a)2. The petitioner's December 23, 2015 appeal is more than 30 days from the November 13, 2015, interception notice. Thus, no jurisdiction exists for me to review the correctness of the November 2015 interception decision.

CONCLUSIONS OF LAW

1. The petitioner's December 23, 2015, appeal was untimely with respect to the Department's November 13, 2015 refund interception certification.

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 Madison,
Wisconsin, this 4th day of February, 2016

\sNancy J. Gagnon
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 February 4, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit