



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Park Forest, IL 60466

DECISION

FTI/171597

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on February 10, 2016, at Kenosha, Wisconsin.

There remains no issue for determination.

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: [Redacted]
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [Redacted]) was a resident of Kenosha County. The petitioner moved out of the state of Wisconsin, but continued to receive FoodShare (FS) benefits with an old Kenosha County address.
2. On February 19, 2015 the agency sent the petitioner a notice stating that she was overpaid \$776.00 in FS benefits for the period from November 1, 2014 to February 28, 2015.

3. On March 3, 2015 the agency sent the petitioner a Repayment Agreement for the above-reference FS overpayment.
4. On April 2, 2015, May 4, 2015, and June 2, 2015 the agency sent the petitioner dunning notices reminding her she still owed the above-referenced FS overpayment.
5. On July 17, 2015 the agency sent the petitioner a notice stating that they were going to intercept her taxes for this unpaid FS overpayment.
6. On January 25, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and medical assistance payments made incorrectly. The department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 46.254(3).

An administrative law judge (ALJ) 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 a state tax refund intercept must be filed within 30 days of the date of the notice of the tax intercept pursuant to sec. 227.44 Wis. Stats.

In this case the notice of tax intercept was sent to the petitioner on July 17, 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until January 25, 2016. This is beyond the 30 limit to appeal.

Although the petitioner's appeal appears untimely, there is no issue for me to decide because the petitioner asked for her taxes to be taken for this overpayment. The petitioner seems to want to repay this debt, and stated that she prefers her taxes cover this debt. Thus, there is no longer an issue for me to decide as she is no longer disputing the tax intercept.

CONCLUSIONS OF LAW

There remains no issue for my determination.

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.

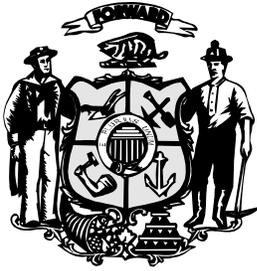
APPEAL TO COURT

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 11th day of February, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 11, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit