



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FTI - 174197

PRELIMINARY RECITALS

On May 6, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to challenge a decision by the Waukesha County Health and Human Services regarding FoodShare benefits (FS). The hearing was held on June 21, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

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, WI53703

By: [Redacted]

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County.

2. On August 15, 2015, the agency issued FS Overpayment Notices and worksheets to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amounts of \$2,213 for the period of November 29, 2011 – October 31, 2012, \$2,400 for the period of November 1, 2012 – October 31, 2013 and \$2,273 for the period of November 1, 2013 – October 31, 2014 due to inaccurate reporting of self-employment income. The notice also informed the Petitioner of the right to appeal the agency determination by filing a request for a hearing no later than November 10, 2015.
3. On October 5, 2015, November 3, 2015 and December 2, 2015, the agency mailed dunning notices to the Petitioner.
4. On January 15, 2016, the agency issued a tax intercept notice to the Petitioner informing him that his taxes may be intercepted for an unpaid public assistance debt in the amount of \$6,866. The notice also informed him of the right to appeal this action by filing a request for a hearing within 30 days of the date of the notice with the Division of Hearings and Appeals.
5. On May 6, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing examiner may only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. See 7 C.F.R., § 273.15(g). A negative action can be the reduction of payments or an action to recoup overpayments. An appeal of a tax intercept action must be filed within 30 days of the date of the notice. Wis. Stat. § 49.85.

In this case, the Petitioner disputes the merits of the overpayment action as well as the tax intercept action. He did not dispute that his appeals are not timely filed and stated that they got buried in the mail he receives and delayed because he asked his accountant to review the matter during the busy tax season. The Petitioner did not dispute that he receives the notices of overpayment and tax intercept.

If an appeal is not timely filed, DHA has no jurisdiction to rule on the matter. The Petitioner's appeal was filed nearly nine months after the overpayment notices and four months after the tax intercept notice. The appeals are untimely as to both actions and DHA has no jurisdiction to rule on the merits of either action.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

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, **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 July, 2016

\s _____
Debra 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 July 21, 2016.

Waukesha County Health and Human Services
Public Assistance Collection Unit