



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FTI/141140

PRELIMINARY RECITALS

Pursuant to a petition filed May 24, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 07, 2012, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a notice of FoodShare overissuance and whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overissuance of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Belinda Bridges

Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent two Notifications of FoodShare Overissuance dated December 28, 2011 that informed Petitioner that she had been overissued FoodShare in the total amount of \$9793.00 (claim # [REDACTED] in the amount of \$3644.00 for the period from November 17, 2000 to April 30, 2011 and claim # [REDACTED] in the amount of \$5753.00 for the period from May 1, 2011 to December 31, 2011). The notices were sent to Petitioner at the above address and do contain appeal instructions.

3. Petitioner was sent a tax intercept notice dated May 11, 2012 that informed Petitioner that her tax refunds were subject to intercept to repay the \$9793.00 overpayment of FoodShare benefits. That was sent to Petitioner at the above address and did contain appeal instructions.
4. Petitioner filed this hearing request with the Division of Hearings and Appeals on May 24, 2012 to contest the FoodShare overissuance claims noted at Finding # 2 as well as the tax intercept notice.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). Petitioner's appeal is well over 90 days past the December 28, 2011 notices of FoodShare overissuance. Thus Petitioner's appeal is untimely and the Division of Hearings and Appeals is without jurisdiction to make a decision on the merits of the agency determination that Petitioner was overissued FoodShare as noted at Finding # 2.

I also note that the State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). All adult members of the household are liable for an overpayment. *FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4);*

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the 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 § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (emphasis added).

Petitioner has had a prior opportunity for hearing on the merits of the overpayment; there was a 90 day opportunity to file an appeal commencing December 28, 2011. That was not done and there is no good cause provision in the law for extending that filing deadline. As a practical matter then, the determination by the agency that the Petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits. *See 45 C.F.R. § 233.20(a)(13)(I)*. The Department may, therefore, utilize tax intercept as a means of recovering the overpayment. *See, Wis. Stat. § 46.85*.

CONCLUSIONS OF LAW

1. That Petitioner's May 24, 2012 appeal is untimely with respect to the December 28, 2011 notices of FoodShare overissuance.

2. That the Department may certify the sum of \$9793.00 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 7, 2012.

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