



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

FOP/143364

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 23, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 9, 2012, at Madison, Wisconsin.

The issue for determination is whether the petitioner's hearing request was timely filed.

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: Michelle Furr

Dane County Department of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On March 19, 2012, the county agency issued a *Notification of FS Overissuance* and worksheet to the petitioner at her correct address. The petitioner received this notice. The Notification advised the petitioner that she had been overpaid \$998 in FS from March 1, 2011 through December 31, 2011.

3. Page 2 of the *Notification* advised the petitioner to file any hearing request regarding the overpayment within 90 days. The petitioner did not file her appeal until August 23, 2012, which is more than 90 days from March 19, 2012.

### 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 concerning FS must be filed within **90** days of the date of that action. See 7 C.F.R., sec. 273.15(g); Income Maintenance Manual, Chapter 1, §1.2.3. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 90 days after the date of the March action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

### CONCLUSIONS OF LAW

1. This judge has no jurisdiction to review the merits of the petitioner's appeal, because her hearing request was not filed on time.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 Madison,  
Wisconsin, this 10th day of October, 2012

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Nancy 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 October 10, 2012.

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