



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143808

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 14, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services (MES) in regard to FoodShare benefits (FS), a telephonic hearing was held on October 18, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of her FS overpayment during the period of March 1, 2009 to February 28, 2010, is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Hartung, HSPC senior  
Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits for a FS household of three (petitioner and her two children) during the period of March 1, 2009 to February 28, 2010.

2. The petitioner failed to report to the county agency that she has not had custody of her two children since about October 8, 2008, and therefore those children were not in her FS group.
3. Milwaukee Enrollment Services (MES) sent a November 4, 2010 Notification of Food Stamp Overissuance (Claim # [REDACTED]) to the petitioner at her correct address stating that she had received overissuances of FS in the amounts of \$2,593.00 during the period of March 1 2009 to February 28, 2010, due to her failure to timely report correct household composition (her two children no longer residing in her household). See Exhibit 1. That notice stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 90 days of the notice's date. The petitioner failed to file any appeal within 90 days of that notice. The petitioner received Exhibit 1.
4. MES began recouping the petitioner's FS overpayment as of December, 2010 , and recouped a total of \$663 as of the October 18, 2012 hearing date.
5. The remaining amount of petitioner's FS overpayment was \$1,930.00 as of the October 18, 2012 hearing date.
6. The petitioner faxed her appeal on September 14, 2012 to the Division of Hearings and Appeals (DHA) which was received at DHA on September 14, 2012 regarding her November 4, 2010 FS overpayment notice.
7. The petitioner was unable to establish that she filed any appeal prior to September 14, 2012 regarding her November 4, 2010 FS overpayment notice.
8. There is no evidence in the hearing record that DHS has filed a FS tax intercept claim against the petitioner's FS overpayment.

### DISCUSSION

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 AFDC or MA must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. **An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g).** A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the November 4, 2010 FS Overpayment Notice (Exhibit 1) that was sent to the petitioner. The petitioner admitted that she received Exhibit 1. As a result, the petitioner's September 14, 2012 appeal of was filed significantly more than 90 days after the November 4, 2010 date for of that notice (Exhibit 1).

During the October 18, 2012 hearing, petitioner did not provide any convincing reason to establish that her FS overpayment appeal should be considered timely. She explained that she delayed until September 14, 2012 to fax her appeal because she was "confused" and thought the overpayment had already been repaid in full. The petitioner was unable to provide any good cause for not filing an appeal with DHA until she faxed her appeal to DHA on September 14, 2012. The petitioner was also unable to provide any evidence that she had filed an appeal with DHA regarding the FS overpayment prior to September 14, 2012. Furthermore, the petitioner admitted receiving Exhibit 1. Due to the above, I must conclude that the petitioner failed to establish any good cause for why her FS overpayment appeal should be timely, when she filed the appeal significantly more than 90 days after the November 4, 2012 date of that action. Accordingly, I conclude that because petitioner did not appeal her FS overpayment within the 90-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the underlying FS overpayment issue in this case.

**CONCLUSIONS OF LAW**

There is no subject matter jurisdiction regarding the petitioner's FS overpayment during the period of March 1, 2009 to February 28, 2010, as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

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, 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 8th day of November, 2012

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Gary M. Wolkstein  
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 November 8, 2012.

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