



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FTI/142476

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 19, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 05, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's appeal 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: Susan Rhode

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

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 17, 2012, the county agency sent a written notice of negative action to the petitioner.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on July 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. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, or as in this case, a tax intercept to recoup overpaid benefits. The petitioner's appeal was filed on July 19, 2012, 153 days after the February 17, 2012 date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

It should be noted that at the hearing, Petitioner also wanted to contest the county agency's initial determination that she was over-issued FoodShare benefits. However, her appeal is again untimely. According to the testimony of Ms. Rhode and the information contained in Exhibit 9, the county agency sent Petitioner notice of the alleged overpayment on September 20, 2011. Petitioner's appeal was filed ten months later, well past the 90-day appeal period.

**CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**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 served and 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).

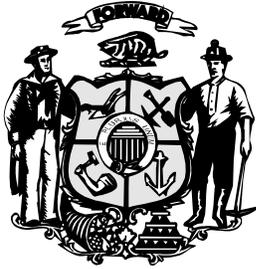
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 Milwaukee,  
Wisconsin, this 7th day of February, 2013.

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\sMayumi M. Ishii  
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 February 7, 2013.

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