



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/146160

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 1, 2013, by telephone. Hearings set for January 16, February 6, and March 14, 2013, were rescheduled at the petitioner's request.

The issues for determination are (1) whether claim preclusion bars further consideration of this FS overpayment determination, (2) whether the petitioner's appeal is timely, and/or (3) whether the petitioner was overpaid \$3,131 in FS for the 12/3/2010 – 11/30/2011 period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Paul Fredrickson, IM Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner's household received FS from at least December 3, 2010, through November 30, 2011. On **November 8, 2011**, the agency sent a *Notification of FS Overissuance* and worksheets (claim #3900 349133) to the petitioner at her correct address, advising her that she had been overpaid FS of \$3,131 for the 12/3/10 – 11/30/11 period. The overpayment was caused by the household's failure to timely report increased earned income. The petitioner timely appealed in January 2012.
3. A fair hearing was conducted regarding the FS overpayment, with Administrative Law Judge Bursinger presiding. She issued her decision, Decision No. FOP/138275, on July 20, 2012. The decision dismissed the petitioner's appeal, and concluded that the petitioner's household had been overpaid \$3,131 from 12/3/10 – 11/30/11. The petitioner filed a rehearing request with Judge Bursinger, which was denied as "no basis" on August 17, 2012. The petitioner did not appeal Judge Bursinger's action to circuit court.
4. The petitioner filed another appeal to contest the above overpayment on December 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 or the reduction or termination of an ongoing case. The petitioner's appeal #146160 was filed **407** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if the petitioner's appeal #146160 had been timely filed to contest the FS overpayment, I would have declined to review the merits of the FS appeal under the legal doctrine of claim preclusion. This is a doctrine that promotes judicial efficiency by allowing a judge to decline to re-litigate a claim that has already been ruled on in a previous proceeding. The petitioner does not get to argue against the overpayment twice.

CONCLUSIONS OF LAW

1. There is no jurisdiction as the appeal is untimely.
2. The petitioner's contentions will not be re-litigated under the doctrine of claim preclusion.

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 Madison,
Wisconsin, this 2nd day of May, 2013

\sNancy 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 May 2, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability