



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/146686

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 7, 2012, the agency issued a Notification of FoodShare (FS) Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$792 for the period of October 1, 2011 – December 31, 2011. The notice informed the

Petitioner of the right to appeal the agency's determination by filing an appeal within 90 days with the Division of Hearings and Appeals.

3. On July 3, 2012, August 2, 2012 and September 5, 2012, the agency issued dunning notices to the Petitioner regarding the overpayment.
4. On October 12, 2012, the agency issued a Notice of State Tax Refund informing her that the state intends to intercept tax refunds for an outstanding debt of \$792. The notice also informed the Petitioner of the right to appeal the tax intercept by filing an appeal within 30 days of the date of the notice.
5. On January 16, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on 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., sec. 273.15(g). The petitioner's appeal was filed 254 days after the date of the overissuance action. As it relates to the overissuance, the Petitioner's appeal is untimely and no jurisdiction exists for considering the merits of the overissuance action.

With regard to the tax intercept action, the Petitioner's appeal was filed 95 days after the date of the notice. It also is untimely and no jurisdiction exists for considering the merits of that action.

I note that the Petitioner indicated that she did not necessarily dispute the overissuance but she indicated that she had asked to set up a repayment schedule of \$20/month and the agency declined to do so. The agency worker and I indicated to the Petitioner that she will need to discuss the repayment schedule with the collection unit.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 13th day of March, 2013

\sDebra Bursinger
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 March 13, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability