



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FTI/146753

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 17, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Wood County Human Services - WI Rapids ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 21, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia, Resolution Coordinator, Northern Consortia  
Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495 -8095

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently a resident of the State of Arizona but previously was a resident of the State of Wisconsin.

2. The following FS overpayment Claims have been established against petitioner in the total amount of \$2,063.00 covering the time period November 1, 2003 to December 31, 2004 (part of these overpayment Claims have already been repaid; current outstanding balance on both Claims combined is \$1,003.00)
  - (I) Claim Number [REDACTED] for the time period November 1, 2003 to December 31, 2003 in the amount of \$340.00; and,
  - (II) Claim Number [REDACTED] for the time period February 1, 2004 to December 31, 2004, in the amount of \$1,723.00.
3. The County mailed petitioner a computer-generated letter notice dated April 12, 2005 and entitled *Notification of FS Overissuance* notifying petitioner of the FS overpayment Claim Number [REDACTED] listed in *Finding of Fact #2*, above; the notice also notified petitioner of her right to appeal, including the 90-day time limit for filing an appeal; the County used petitioner's then current and correct address; petitioner received this letter notice.
4. The County mailed petitioner a computer-generated letter notice dated April 12, 2005 and entitled *Notification of FS Overissuance* notifying petitioner of the FS overpayment Claim Number [REDACTED] listed in *Finding of Fact #2*, above; the notice also notified petitioner of her right to appeal, including the 90-day time limit for filing an appeal; the County used petitioner's then current and correct address; petitioner received this letter notice.
5. From May 2005 to June 2012 petitioner continued to receive FS and an amount was recouped from her FS every month to repay the FS overpayments.
6. In September 2010, October 2010, and November 2010 petitioner made payments totaling \$75.00 toward the overpayments.
7. The Wisconsin Department of Children and Families ["DCF"] mailed a written notice dated February 12, 2010 and entitled *Important Notice About Your State Tax Refund and Credits* to petitioner's then current and correct address (which was also petitioner's last -known address); the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted to repay the CC overpayment identified in *Findings of Fact #2(II)*, above (Claim Number [REDACTED]); the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing and the DHA address to which the Hearing request should be mailed; petitioner received this letter notice.
8. Petitioner's Wisconsin FS case closed June 30, 2012 after she moved to Arizona.
9. The County mailed petitioner a computer-generated letter notice dated July 3, 2012 and entitled *Repayment Agreement For FoodShare Overpayment*; the letter notice referenced the prior letter notices that were sent to petitioner and petitioner's right to appeal; petitioner received the July 3, 2012 letter notice, signed it, and returned it to the County agreeing to pay \$50.00 per month toward the overpayments but no such payments were ever made.
10. Petitioner's request for a Hearing was made by way of letter from petitioner dated January 14, 2013 and received by the Division of Hearings and Appeals ["DHA"] on January 22, 2013 via U.S. Mail postmarked on January 17, 2013.

## DISCUSSION

### **TAX INTERCEPT**

There has been no tax intercept of petitioner as of yet. However, she received the February 12, 2010 *Important Notice About Your State Tax refund and Credits* .

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(a) (September 2001). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the tax intercept notice is dated February 12, 2010. As required, the notice was sent to petitioner's last-known address. See, Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2011-12). Petitioner's request for a Hearing was not made until January 17, 2013. This is almost 2 years after the tax intercept notice and is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

### **FS OVERPAYMENT**

Petitioner appeals because amounts are being deducted from her monthly Social Security to repay the FS overpayments. She wishes to now dispute the underlying reasons for the FS overpayments.

An FS appeal is timely if it concerns any action by the county agency which occurred in the prior ninety days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (September 2001); *FoodShare Wisconsin Handbook* 6.4.1.; *Income Maintenance Manual* 3.3.1.

In this case, the action being appealed by petitioner occurred on April 12, 2005 when the County established the overpayment Claims against petitioner and sent petitioner a written notice. April 12, 2005 is almost 8 years prior to the date petitioner requested a Hearing. Thus, petitioner's appeal is not timely.

An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.05(4)(e) (September 2001)

### **PETITIONER'S TESTIMONY**

At the February 21, 2013 Hearing petitioner testified that she was never informed she had a right to appeal and that she did not request a Hearing sooner because she did not know that she could. She testified that she never received the letter notices that were sent to her. In light of all of the above *Findings of Fact*, petitioner's testimony is not credible.

**CONCLUSIONS OF LAW**

DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file her appeal in a timely manner.

**NOW, THEREFORE, it is**

**ORDERED**

That 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 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 25th day of February, 2013

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\sSean P. Maloney  
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 25, 2013.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability