



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/147034

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 01, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on March 11, 2013, at , Wisconsin.

The issue for determination is whether the appeal of the tax intercept is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Aimee [REDACTED]

PACU - 5173

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2008 through 2010, the petitioner was a recipient of MA and FoodShare. In 2010, the Department determined that petitioner was not living in Wisconsin. The Department confirmed that petitioner was receiving food stamp and medical assistance benefits in Illinois. The Department determined that she had been overissued FS benefits and overpaid BC+ benefits from

2008 to 2010. The Department contacted the state of Illinois in August and was provided the address at which petitioner was receiving Illinois benefits. That address was a PO box in [REDACTED], [REDACTED].

3. On December 2, 2010, the Department mailed overpayment notices to the address in [REDACTED], [REDACTED]. The notices were not returned as undeliverable.
4. On January 4, 2011, the Department mailed Dunning notices to petitioner at the [REDACTED], [REDACTED] address. These were not returned as undeliverable.
5. On February 2, 2011, the Department mailed Dunning notices to petitioner at the [REDACTED], [REDACTED] address. These were not returned as undeliverable.
6. On February 11, 2011, the Department issued a tax intercept notice to petitioner at the [REDACTED], [REDACTED] address. This was not returned as undeliverable.
7. Petitioner filed a request for hearing on February 1, 2013.

### 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 by a county agency concerning MA must be filed within 45 days of the date of the action; for FS eligibility, the filing deadline is 90 days. Section 49.45(5), Wis. Stats. *An appeal from a state tax refund interception notice must be filed within 30 days of the date of the interception notice.* Wis. Stat. §49.85(3)(a)2. The petitioner's February 1, 2013, appeal is more than 30 days from the February 11, 2011, interception notice.

The intercept notice was mailed to a post office box in [REDACTED], [REDACTED]. The petitioner explained that at the time of the intercept notice she was living in [REDACTED], [REDACTED]. She stated that she had not lived in [REDACTED], [REDACTED] since 2007 or 2008. I simply do not find this to be credible. The Department enlisted the aid of the state of Illinois in August 2010. At that time, the record indicates that petitioner was receiving food stamps and Medicaid in the state of Illinois and the [REDACTED], [REDACTED] address was the address on record. Petitioner, however, denies that she was receiving Illinois benefits at that time at that address. It may be that petitioner was living in [REDACTED], [REDACTED] at that time, but it is also clear in this record based on the testimony of Ms. [REDACTED] regarding her inquiries to Illinois that petitioner was using the [REDACTED], [REDACTED] address until as late as August 2010 for the receipt of Illinois public benefits. Petitioner did not rebut this evidence.

Petitioner also alluded to a sophisticated identity theft of which she was the victim. She explained that there is a person who was found with a driver's license with petitioner's information but this thief's picture on it. Petitioner explained that the person has been convicted and served jail time for this, or similar, crimes. Petitioner claimed to have documents from courts and from police that would establish that she has been the victim of such identity theft since 2008 and that would be probative in this case. I allowed petitioner 20 days following the hearing for her to submit this documentation. Petitioner specifically requested the address and fax number to which to send her documents. She confirmed that she had the information on the hearing notice. Nothing was received.

I do not find petitioner credible. I specifically do not find her credible in stating that her [REDACTED], [REDACTED] address was not her address after 2007 or 2008. I conclude then that the Department mailed the intercept notice to the most recent and most appropriate address. Thus, no jurisdiction exists for me to review the correctness of the 2011 interception decision and notice.

### CONCLUSIONS OF LAW

The appeal was not timely filed.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 19th day of April, 2013

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 19, 2013.

PACU - 5173

Division of Health Care Access and Accountability