



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/147172

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 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 07, 2013, at Milwaukee, Wisconsin.

The record was held open until March 21, 2013, to let the parties supplement the record. Milwaukee Enrollment Services did not submit any additional documentation. Petitioner submitted a fax from the Arkansas Department of Human Services. It has been marked as Exhibit 5 and entered into the record.

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] by telephone
[REDACTED]
[REDACTED]

Respondent:

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

By: Sharon Thacker, HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Arkansas.
2. Petitioner moved to Arkansas in June 2007. (Testimony of Petitioner)

3. Petitioner has been receiving FoodShare benefits in Arkansas since September 2007. (Testimony of Petitioner; Exhibit 5)
4. FoodShare benefits were issued to Petitioner from Wisconsin between from May 2010 through May 2011. (Exhibit 4 pg. 10)
5. On November 21, 2011, the agency sent Petitioner a Notification of FoodShare overissuance, claim number [REDACTED], indicating that she had been overpaid FoodShare benefits, in the amount of \$6312 from 05/01/10 to 04/30/11. On that same day, the agency sent Petitioner the FoodShare Overpayment Worksheets. (Exhibit 4, pgs. 38-43)
6. On December 2, 2011, the agency sent Petitioner a repayment agreement. (Exhibit 4, pgs. 35-27)
7. The agency sent Petitioner dunning notices on January 3, 2012, February 2, 2012 and March 2, 2012, reminding her of the FoodShare over-issuance. (Exhibit 4, pgs. 32-34)
8. On April 13, 2012, the agency sent Petitioner a notice of tax intercept. (Exhibit 2)
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 8, 2013. (Exhibit 1)
10. The agency sent all correspondence to Petitioner at [REDACTED] WI 53212. Petitioner's father likely maintained that post office box. (Exhibit 4, pgs. 32-43; Testimony of Petitioner)
11. The home address that the agency had on file for Petitioner was [REDACTED] which is Petitioner's grandmother's address. (Testimony of Petitioner; Exhibit 4, pg. 6)
12. The [REDACTED] address was reported in an ACCESS application filed by Petitioner on April 21, 2010, in a Six Month Report form returned to the agency on December 16, 2009 and in an ACCESS application filed on April 25, 2011. (Exhibit 4, pgs. 45-65)
13. Petitioner shared her pin number with her mother and grandmother. (Testimony of Petitioner)
14. Petitioner did not file a police report concerning identity theft. (Testimony of Petitioner)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(2)*.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;

Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.

5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC benefits, and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

Petitioner claimed that she did not get any of the notices and only became aware of the FoodShare over-issuance when her tax returns were recently intercepted. Petitioner's claims of ignorance are not credible, given her testimony that the post office box in question was likely that of her step-father; given her testimony that the home address used in the ACCESS applications and Six Month Report Forms was that of her grandmother, and given her testimony that she shared her pin number with her mother and grandmother. In addition, there is some indication in the record that the agency workers looked at the EBT/Quest card activity for Petitioner and discovered that her EBT/Quest card was being used almost exclusively in Arkansas, where Petitioner has been living since June 2007. (Exhibit 4, pg. 13 and pgs. 67-72) Based upon the foregoing, it is found that Petitioner timely received all notices.

A party has 30-days from the date of notice of tax intercept to file an appeal of the agency's decision to use a tax intercept to recoup an overpayment of FoodShare benefits. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was April 13, 2012. As such, Petitioner needed to file her appeal by May 13, 2012. Her appeal was not filed until February 8, 2013. As such, her appeal is untimely, with regard to the issue of the tax intercept, and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she also wanted to appeal the FoodShare over-issuance, itself. However, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination.

Even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the overissuance, Petitioner's appeal regarding whether she was overissued \$6,312 in FoodShare benefits between May 1, 2010 and April 30, 2011 is untimely.

An appeal of a negative action, including determination of an overissuance, must be filed within 90 days of the date of that action. *7 CFR, §273.15(g).*

In this case, the date of action was November 21, 2011, the date the agency sent Petitioner the Notification of FoodShare Overissuance. As such, Petitioner needed to file her appeal of the overissuance determination by February 20, 2012. She did not file an appeal until February 8, 2013, nearly a year past the appeal deadline.

As such, Petitioner's appeal of the determination of FoodShare Overissuance is untimely and there is no jurisdiction to hear the merits of that issue.

CONCLUSIONS OF LAW

Petitioner's 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 2nd day of April, 2013.

\sMayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability