



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/147199

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**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 Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on March 08, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the petitioner's appeal 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: Lisa Pryes

Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who allegedly resided in a FS group of four during the FS overpayment period of September 1, 2009 to July 31, 2010.

2. On August 11, 2011, the respondent issued a Notification of Food Stamp Overissuance to the petitioner at his address of record advising him that it had opened Claim no. [REDACTED], and was seeking repayment of \$1,664.00 in FS benefit overpayments from the period of September 1, 2009 to July 31, 2010, due to the client error of failing to report accurate household members.
3. The Department sent Dunning notices to the petitioner regarding his FS overpayment in October, 2011, November, 2011, and December, 2011.
4. The petitioner did not file any timely appeal to the Division of Hearings and Appeals (DHA) regarding his August 11, 2011 FS overpayment notice.
5. The Department sent a January 13, 2012 tax intercept notice to the petitioner at his address of record notifying petitioner that the remaining unpaid FS overpayment of \$1,354.00 would be recovered through interception of his state or federal income taxes or credits. This notice specified that an appeal must be filed within 30 days of the date of the notice.
6. The Petitioner mailed a February 8, 2012 appeal letter to the Division of Hearings and Appeals (DHA). That appeal letter was received at DHA on February 11, 2012.
7. No appeal was filed by the petitioner prior to February 8, 2012.

### DISCUSSION

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 Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development 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)

As noted in Findings of Fact #2 - #4 above, the Petitioner had the opportunity for a prior hearing on the merits of his FS overpayment but failed to file any timely appeal to DHA.

During the hearing, the petitioner did not contest that he received the FS overpayment or dunning notices. Furthermore, there is no evidence that any of those notices were returned as undeliverable. Electronic Case Comments submitted by the respondent note:

09/12/11 [REDACTED] [REDACTED] called questioning why he received overpayment notice. He indicated he hasn't live with [his mother] since he was 17 years old – when he had a child of his own. Explained that he was included in the Food Share benefits during the overpayment time period and that if he disagrees with the overpayment, he must file a fair hearing. Mailed fair hearing form to him at [REDACTED], [REDACTED].

██████████. Also explained that when he completes the FS paperwork to request a telephone hearing since he lives out of state.

Exhibit 3.

In response, the petitioner testified that he was in school at the time, and while he knew about the overpayment, it slipped his mind. He further testified that he did not live with his mother during the overpayment period. Unfortunately, the time for petitioner to file an appeal of the overpayment passed long ago, and petitioner has not presented any good cause for failing to comply with the appeal deadline.

Furthermore, the tax intercept notice, dated 1/13/2012, specifically indicated that an appeal of the intercept must be filed within "30 days of the date of this notice." Exhibit 2. Nothing in the records indicates that any appeal was filed with DHA prior to February 8, 2013, over one year after the tax intercept notice was sent to petitioner. Prior decisions of the Division of Hearings and Appeals have confirmed that the failure to file a timely notice of appeal deprives the division of subject matter jurisdiction.

The timeliness requirement of the code is absolute – there are not exceptions and subject matter jurisdiction cannot be waived." See *In the Matter of St. Joseph's Regional Medical Center*, Case no. ML-05-0245. In this particular case, as the request for hearing was not timely filed as to the overpayment, the division lacks jurisdiction over that issue. Similarly, DHA lacks jurisdiction over the tax intercept issue due to the untimeliness of the appeal. While petitioner may find this frustrating, this administrative law judge does not possess the powers of a court of equity to issue decisions based upon fairness. Judges presiding in a Circuit Court may choose to exercise the powers of a "court of equity"; the division's administrative law judges cannot. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

There is no subject matter jurisdiction regarding the August 22, 2011, Notification of FS Overissuance or the January 13, 2012, notice of tax intercept, as petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

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 4th day of April, 2013

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\sPeter McCombs  
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 April 4, 2013.

Brown County Human Services  
Division of Health Care Access and Accountability