



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

FTI/147257

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 12, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Fond Du Lac County Department of Social Services to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare (FS) benefits, a hearing was held on March 7, 2013, at Fond du Lac, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the Petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

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: Deb Bohlman, ESS

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.

2. On April 13, 2012, the Department sent a written notice of negative action ( *Important Notice About Your State Tax Refund and Credits* ) to the petitioner at his correct address.
3. The petitioner filed a hearing request with the department on February 12, 2013. The petitioner's wife previously filed a fair hearing request on November 1, 2012. She withdrew that hearing request, based on a mistaken belief that her income tax refund would not be intercepted.
4. The negative action in this case was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$3,812.00 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the April 13, 2012, notice.
5. The Department determined that the petitioner had been overpaid \$4,134 in FS from October 25 – December 31, 2010, and April 1 – August 31, 2011. See, Exhibit 3, overpayment notices dated March 24, 2011 and October 26, 2011. The Department recouped a portion of the overpayment from the petitioner's monthly ongoing FS benefits for a period of time, until the household stopped receiving FS in approximately March, 2012. A current balance of \$3,812 remains for collection.
6. The petitioner acknowledges receiving the April 13, 2012, interception notice. He asserts that his wife filed a fair hearing request with this office prior to November 1, 2012. The DHA database has no record of a fair hearing request from the petitioner or his wife prior to November 1, 2012.

### 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 Foodshare ordinarily must be filed within 90 days of the date of the action. 7 C.F.R. § 273.15. However, 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 household's November 1, 2012, appeal is more than 30 days from the April 13, 2012 interception notice. Thus, no jurisdiction exists for me to review the correctness of the April 2012 interception decision.

### CONCLUSIONS OF LAW

1. The petitioner's household's November 2012, appeal was untimely with respect to the Department's April 2012 refund interception certification.

**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 Madison,  
Wisconsin, this 8th day of March, 2013

---

\sNancy J. Gagnon  
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 March 8, 2013.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability