



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/147570

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 22, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to overpayments of FoodShare benefits (FS), a telephone hearing was held on March 27, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petition for review is untimely.

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: Belinda Bridges, HSPC  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a two person FS household composed of herself and her husband, [REDACTED]. The household was receiving FS in the period of April, 2009, through March, 2010.
2. On March 2, 2010, the county agency issued two sets of NOTIFICATION(S) OF FS OVERISSUANCE and worksheets (FS overissuance Claim # [REDACTED]), one each to [REDACTED] and [REDACTED], informing them that the agency had determined that the household had been overissued

\$2,932 of FS in the period of April, 2009, through March, 2010, due to a client error in failing to report unearned income, i.e., ██████'s unemployment compensation benefits.

3. The petitioner, ██████, contacted the county agency on March 17, 2010, to disagree with the enactment of a FS recovery action, i.e., a recoupment against her FS allotment, arising from the overpayment determination of March 2, 2010; and the agency worker told her if she disagreed, to file an appeal. See, Exhibit #1, attached Case Comments entry for March 17, 2010.
4. The county agency began recovering against FS overissuance Claim # ██████ by recoupment in the July, 2010, benefit month and has recouped from it in every month but one since, through at least March, 2013, to apply to the debt, i.e., recovering \$493 by recoupment through that latter month. See, Exhibit #1, attached Claim Recoupment History.
5. On February 22, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting, for the first time, the agency determination of March 2, 2010, that the household had been overpaid \$2,932, and asserting that the household had reported ██████'s UC benefits in 2010.
6. The instant appeal was filed 1,087 days after the effective date of the overpayment negative action.

### DISCUSSION

Appeals concerning a negative action taken against a FS recipient, like an overpayment determination, must be filed within 90 days of the effective date of the action. 7 C.F.R. § 273.15(g); Wis. Admin. Code §HA 3.05(3)(a). The instant appeal was filed 1,087 days after the effective date. It is clear that the petitioner was aware of the overpayment determination as early as March 17, 2010. There is no exception under law for these circumstances. The petition for review is untimely as a matter of fact and law, and must be dismissed. I have no jurisdictional authority to review the merits of this appeal dispute.

### CONCLUSIONS OF LAW

That the petition for review is untimely as a matter of fact and law.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 3rd day of April, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 3, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability