



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/148461

PRELIMINARY RECITALS

Pursuant to a petition filed April 2, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the PACU - 5173 to intercept the petitioner's income tax refund and apply it against a prior overpayment of FoodShare benefits (FS), a hearing was held on April 30, 2013, by telephone. A hearing set for April 24, 2013, was rescheduled.

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]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Judy Johnson, OIG
PACU - 5173

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Florida.

2. On **August 17, 2012**, the Department sent a written notice of negative action to the petitioner at her correct mailing address, [REDACTED]. See, Exhibit 2. This is the petitioner's parents' address, and is the last mailing address supplied by the petitioner to the Department. The notice was not returned to the Department as undeliverable.
3. The petitioner filed a hearing request with this Division on April 2, 2013.
4. The negative action in this case was notification of income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$2,200 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the August 17, 2012, notice. She did not do so.
5. The Department notified the petitioner that she had been overpaid \$2,200 in FS for the March 1, 2011 through January 31, 2012 period, via a *Notification of FS Overissuance* (claim # [REDACTED]), mailed to her parents' address on March 8, 2012. The petitioner did not appeal from that Notice within the allotted 90 days. She also did not make any payments against the claim. Accordingly, the Department recovered the entire balance due via tax refund interception in 2013, leaving a current balance of zero remaining for collection. The petitioner would like to have the intercepted funds returned to her.
6. The petitioner's assertion that she did not receive either the August 2012 interception notice, nor the March 2012 overpayment notice, was not credible.

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 or the Department 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 April 2013, appeal is more than 30 days from the August 2012, interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2012 interception decision.

As an aside, I also did not believe the petitioner's testimony that she was (1) living in Wisconsin from March through August 2011 while her sister claimed her as a member of her FS case in Florida, and (2) that she was unaware that she had an open FS case in Wisconsin from September 2011 through December 2012, while admittedly living in Florida. With respect to the September 2011 through December 2012 period, the petitioner never reported her departure from Wisconsin, and continued to use her Wisconsin FS card at multiple locations in Florida (*e.g.*, Tampa 7-Eleven, Clearwater Wal-Mart). See, Exhibit 1. With respect to the March – August 2011 period, if the petitioner was actually in Wisconsin while her sister fraudulently claimed her in the sister's Florida FS case, the petitioner wish to ask her sister to reimburse her for the \$1,200 portion of the intercepted \$2,200 that was attributable to the March through August 2011 "double payment."

CONCLUSIONS OF LAW

1. The petitioner's April 2013, appeal was untimely with respect to the Department's August 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 1st day of May, 2013

\sNancy J. Gagnon
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 May 1, 2013.

PACU - 5173

Division of Health Care Access and Accountability