



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/149278

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 08, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 19, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this matter.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Mary Donahue, ES Supervisor  
Laura Middleton, Overpayment Specialist  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**OTHER PERSON PRESENT:**

[REDACTED], petitioner's former guardian

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The following Claim was established against petitioner for overpayments of FS: Claim Number [REDACTED]; December 27, 2011 to May 31, 2012; \$1,032.00.
3. The State of Wisconsin mailed a written notice to petitioner, dated March 15, 2013 and entitled *Important Notice About Your State Tax Refund and Credits*, at her last-known address (which is the same as her current address); the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted to repay the FS overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing.
4. Petitioner requested a Hearing concerning the FS tax intercept by a *Request For Fair Hearing* form dated April 29, 2013 and received by DHA on May 9, 2013 via U.S. Mail postmarked May 8, 2013.

**DISCUSSION**

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(a) (September 2001). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (September 2001).

In this case, the tax intercept notice is dated March 15, 2013. Petitioner's request for a Hearing was not made until May 8, 2013. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Petitioner testified that she was in Missouri and did have access to her mail. However, all that is required is that the tax intercept notice be mailed to the last-known address of the person from whom the State of Wisconsin intends to recovery the overpayment. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2011-12). Petitioner does not deny that the tax intercept notice was mailed was mailed to her last known address (which was also her correct mailing address). Further, petitioner never notified the County of any change of address.

Finally, it is also noted that petitioner's request for a Hearing is also well outside of the allowed time for requesting a Hearing concerning an FS overpayment. An FS appeal (including an FS overpayment appeal) is timely only if it concerns any action by the County which occurred in the prior 90 days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (September 2001); *FoodShare Wisconsin Handbook* 6.4.1. Petitioner was sent a computer-generated letter notice dated November 1, 2012 and entitled *Notification of FS Overissuance* notifying her of the FS overpayment detailed in *Finding of Fact #2*. The notice also notified petitioner of her right to appeal, including the 90-day time limit for filing an appeal.

**CONCLUSIONS OF LAW**

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

**NOW, THEREFORE, it is**

**ORDERED**

That 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 21st day of June, 2013

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\sSean P. Maloney  
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 June 21, 2013.

Rock County Department of Social Services  
Division of Health Care Access and Accountability