



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149383

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 11, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

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: Belinda Bridges, Income Maintenance Specialist ["IMS"], Advanced
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The following FS overpayment Claim has been established against petitioner: Claim Number [REDACTED]; February 1, 2011 to August 31, 2011; \$2,269.00 (current outstanding balance of \$1,899.00).

3. Petitioner received a computer-generated letter notice dated August 22, 2011 and entitled *Notification of FS Overissuance* notifying her of the FS overpayment detailed in *Finding of Fact #2*, above; the notice also notified petitioner of her right to appeal, including the 90-day time limit for filing an appeal.
4. Petitioner's request for a Hearing was made by way of *Request For Fair Hearing* form dated May 14, 2013 and received by the Division of Hearings and Appeals ["DHA"] on May 15, 2013 via U.S. Mail postmarked on May 14, 2013.

DISCUSSION

An FS appeal is timely if it concerns any action by the county agency 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.; *Income Maintenance Manual* 3.3.1.

In this case, the action being appealed by petitioner occurred on August 22, **2011** when the MiLES established the overpayment Claim against petitioner and sent petitioner a written notice. Petitioner did not appeal until May **2013**. This is well outside of the allowed 90-days. Thus, petitioner's appeal is not timely. An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.05(4)(e) (September 2001)

At the June 11, 2013 Hearing petitioner testified that she did not request a Hearing sooner because "I do not remember getting the overpayment notice." Petitioner testified that she does not know why she would not have gotten the overpayment notice. In the absence of any other evidence it must be presumed that petitioner received the overpayment notice.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file her appeal in a timely manner.

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 13th day of June, 2013

\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 13, 2013.

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