



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149959

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 17, 2013, at Milwaukee, Wisconsin.

The issue for determination whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Belinda Bridges, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 26, 2011, the county agency sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating she was over-issued FoodShare benefits in the amount of \$1955.00 for the period of 10/01/10 to 02/28/11. (Exhibit 2, pg. 18)

3. The Petitioner's son made arrangements with the county agency to have a portion of Petitioner's FoodShare benefits withheld to pay off the overpayment. (Testimony of Petitioner's son/representative)
4. On June 4, 2013, Petitioner received a repayment agreement for Claim Number [REDACTED], asking the Petitioner to make payment arrangements for the balance of the overpayment, which was \$1785.00. (Exhibit 2, pg. 43)
5. Petitioner's son thought that a new overpayment was being levied and so, filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 12, 2013. (Testimony of Petitioner's son/representative; Exhibit 1)

DISCUSSION

At the hearing, Petitioner's son indicated that he now understood that the notice dated June 4, 2013, concerned the same overpayment discussed in the October 26, 2011 notice. However, Petitioner's son indicated that he believes the agency might have miscalculated the amount of the overpayment, because his mother did not receive her Social Security benefits, as early as the agency believes.

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 concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, the termination of an ongoing case, or as in this case, the recoupment of an overpayment.

The date of action was October 26, 2011, the date Petitioner was notified of the agency's intent to recoup an overpayment. The petitioner's appeal was filed on June 12, 2013, 595 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering whether the agency correctly determined that an overpayment occurred or whether the agency correctly calculated the overpayment.

Petitioner will need to contact the Public Assistance Collection Unit (PACU) and provide proof of when she received her benefits (i.e. notice from the Social Security Administration; bank statements showing the direct deposit of the checks, etc.), if she wishes them to make an adjustment to the overpayment.

The Public Assistance Collection Unit can be contacted at:

Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938
1-[REDACTED]
Fax: [REDACTED]

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

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 Milwaukee,
Wisconsin, this 22nd day of July, 2013.

\sMayumi M. Ishii
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 July 22, 2013.

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