



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/150008

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 14, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on July 18, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recoupment an overissuance of FS benefits in the amount of \$505 for the period of February 1, 2012 – April 30, 2012.

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: Kathy Jones

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 1, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$200/month in FS benefits effective February 1, 2012.

3. On August 7, 2012, the agency issued a Notification of FS Overissuance to the Petitioner informing him that the agency sought to recover an overissuance of \$600 in FS benefits for the period of February 1, 2012 – April 30, 2012. The notice also informed him of the right to appeal the overissuance within 90 days to the Division of Hearings and Appeals.
4. On August 7, 2012, the Petitioner signed a Repayment Agreement with the agency agreeing to reduce his currently monthly FS benefits by \$17/month to recoup the overpayment. The agreement he signed further stated: “I understand that if my FoodShare benefits are terminated, any outstanding amount owed must be collected.”
5. On August 14, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$73/month in FS benefits effective August 1, 2012. The notice further informed him of the right to appeal this determination within 90 days to the Division of Hearings and Appeals.
6. On August 29, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$63/month in FS benefits effective October 1, 2012. The notice further informed him of the right to appeal this determination to the Division of Hearings and Appeals by December 31, 2012.
7. On September 10, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$66/month in FS benefits effective October 1, 2012. The notice further informed him of the right to appeal this determination to the Division of Hearings and Appeals within 90 days.
8. On November 19, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$102/month in FS benefits effective December 1, 2012. The notice further informed him of the right to appeal this determination to the Division of Hearings and Appeals within 90 days.
9. The agency has recouped \$95 of the \$600 overissuance amount, leaving an outstanding balance of \$505.
10. Dunning notices were issued to the Petitioner on November 2, 2012, February 4, 2013, and June 4, 2013.
11. Petitioner is no longer receiving FS benefits effective January 1, 2013.
12. On June 14, 2013, Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case 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 concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

At the hearing, the Petitioner raised issues with the various reductions in his FS benefits from August and September, 2012. He also raised an issue with regard to the FS overissuance from August, 2012. His hearing request of June 14, 2013 is clearly beyond the 90 day time period for filing an appeal on any of these matters. Thus, I have no jurisdiction to rule on any of the actions disputed by the Petitioner.

### **CONCLUSIONS OF LAW**

The Petitioner’s appeal was untimely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and 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 Milwaukee,  
Wisconsin, this 7th day of August, 2013

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\sDebra Bursinger  
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 August 7, 2013.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability