



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/150908

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal is timely.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Respondent established Claim no. [REDACTED], an overpayment of FS benefits to petitioner in the amount of \$1,614.00, by notice to petitioner dated April 24, 2009. Exhibit 5.
3. Respondent issued a notice of tax intercept to petitioner on February 12, 2010. Exhibit 2.

4. Claim no. [REDACTED] had an outstanding balance of \$459.00 at the time of hearing in the instant matter.

DISCUSSION

A party has 30-days from the date of notice of tax intercept to file an appeal of the agency's decision to use a tax intercept to recoup an overpayment of FoodShare benefits. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was February 12, 2010. As such, Petitioner needed to file her appeal by March 14, 2010. Her appeal was not filed until July 26, 2013. As such, her appeal is untimely with regard to the issue of the tax intercept and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she was specifically seeking to reduce the amount of FS being withheld as a result of the overpayment that was the subject of the tax intercept. However, I do not possess any authority to amend overpayment-related deductions from on-going benefits unless the respondent is recouping amounts in excess of its statutory authority. The record does not reveal that to be the case here. As this appears to be a specific economic hardship issue, respondent advised petitioner to contact the Public Assistance Collections Unit directly.

CONCLUSIONS OF LAW

Petitioner's 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 Madison,
Wisconsin, this 20th day of September, 2013

\sPeter McCombs
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 September 20, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit