



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/153503

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 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 December 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency correctly issued a tax intercept to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Sylvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. For the period of June 1, 2012 – December 31, 2012, the Petitioner received FS benefits of \$200/month. The agency incorrectly calculated Petitioner’s household income by failing to include unemployment compensation benefits of \$1,560.90/month.

3. For the period of January 1, 2103 – April 30, 2013, the Petitioner received \$16/month in FS benefits based on unearned income from UC benefits.
4. On April 1, 2013, the agency issued an overpayment notification and overpayment worksheets to the Petitioner notifying her of the agency's determination that it intends to recoup an overissuance of FS benefits in the amount of \$1,288 for the period of June 1, 2012 – December 31, 2012. The notice also informed the Petitioner of the right to file an appeal with the Division of Hearings and Appeals within 90 days of the date of the notice.
5. On April 2, 2013, the agency issued a repayment agreement to the Petitioner.
6. On April 17, 2013, the agency issued a Notice of Decision informing the Petitioner that her FS benefits would decrease from \$16 to \$6/month due to a \$10/month recoupment for the FS overissuance.
7. On May 23, 2013, the agency issued a Notice of Decision informing the Petitioner that her FS benefits would increase to \$180/month effective May 23, 2013 based on a decrease in household income due to UC benefits ending on April 22, 2013.
8. The agency recouped \$10 from Petitioner's FS benefits in May, 2013 and \$20 from Petitioner's FS benefits in June, 2013. The outstanding balance on the overissuance is \$1,258.00.
9. On June 18, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end on July 1, 2013 because she had not completed a six month review form (SMRF). The Petitioner submitted the SMRF.
10. On June 25, 2013, the agency issued a Notice of Proof Needed requesting employment verifications by July 5, 2013. The notice informed the Petitioner that if requested verifications were not received by July 5, 2013, her benefits would end effective July 1, 2013. Petitioner submitted the requested verifications by the due date.
11. On July 10, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits was denied due to household income over the program limit. The notice also informed the Petitioner of the right to appeal this determination by filing an appeal with the Division of Hearings and Appeals on or before October 9, 2013.
12. On October 11, 2013, the agency issued a notice of state tax intercept to the Petitioner informing her that she has an unpaid debt for excess public assistance in the amount of \$1,258 that may be intercepted from tax refunds. The notice informed her of a right to appeal the agency action by filing an appeal with the Division of Hearings and Appeals within 30 days of the date of the notice.
13. On November 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule 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 tax intercept must be filed within 30 days of the date of the notice. Wis. Stats. § 49.85. The Petitioner's appeal was filed 32 days after the date of the tax intercept notice. It was filed 124 days after the date of the notice that FS benefits ended on July 1, 2013. It was filed 195 days after the date the date of the FS Overissuance Notice.

The Petitioner testified that she disputes the amount of the overpayment and not the fact that there was an overpayment. Specifically, she testified that she believes there were months that she was eligible for more FS benefits than she received and that there should be an offset of the overpayment amount based on what she was eligible for in other months. In addition, she testified that she did not understand that her

FS case was closed July 1, 2013 and believed she was not receiving benefits because they were recouped as part of the overpayment.

I note that if the Petitioner believed she was eligible for additional benefits, she needed to appeal the agency determination within 90 days of the date of each determination. With regard to her case closure, the agency sent notices that her benefits would end July 1 and a notice that the benefits did, in fact, end on July 1. The Petitioner's appeal is not timely to review any of the agency's previous determinations and is not timely with regard to the overpayment or the tax intercept issues. Therefore, I have no jurisdiction to rule on the merits of any of the agency determinations. As dicta, I note that the Petitioner's argument that the overpayment should be offset by benefits she may have been eligible for would not have merit. However, if her case had not closed, the agency would have continued to recoup the benefits from her monthly allotment.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

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, Room 651, 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 8th day of January, 2014

\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 January 8, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit