



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/154030

PRELIMINARY RECITALS

Pursuant to a petition filed December 06, 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 [MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on January 14, 2014.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this matter.

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, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong, Income Maintenance ["IM"] Specialist II
Keisha Love, Child Subsidy Specialist Senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

OTHER PERSON PRESENT:

[REDACTED] [REDACTED], petitioner's daughter (2 years old)

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 3 Claims were established against petitioner for overpayments of FS during the time period January 1, 2009 to July 31, 2011 in the total amount of \$1,484.00 (part of this total amount has already been repaid):
 - (1) Claim Number [REDACTED]; January 1, 2009 to December 31, 2009; \$186.00;
 - (2) Claim Number [REDACTED]; January 1, 2010 to December 31, 2010; \$192.00; and,
 - (3) Claim Number [REDACTED]; January 1, 2011 to July 31, 2011; \$1,106.00.
3. The State of Wisconsin mailed a written notice to petitioner, dated May 11, 2012 and entitled *Important Notice About Your State Tax Refund and Credits*, at her last-known address; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$1,358.00 to repay the FS overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing.
4. With regard to the FS overpayments identified in *Findings of Fact #2*, above, petitioner was sent several overpayment notices dated August 4, 2011 and entitled *Notification of FS Overissuance*; petitioner claims to have not receive those notices; however, on August 23, 2011 petitioner contacted MiLES with regard to the overpayments.
5. The current outstanding balance for the FS overpayments identified in *Findings of Fact #2*, above, is \$1,240.00.
6. Petitioner requested a Hearing concerning the FS tax intercept by a *Request For Fair Hearing* form dated December 5, 2013 and received by DHA on December 10, 2013 via U.S. Mail postmarked December 6, 2013.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(a) (September 2001). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated May 11, 2012. Petitioner's request for a Hearing was not made until December 6, 2013. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Petitioner testified that she did not receive the May 11, 2012 tax intercept notice. However, all that is required is that the tax intercept notice be mailed to the last-known address of the person from whom the State of Wisconsin intends to recovery the overpayment. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2011-12). Petitioner does not deny that the tax intercept notice was mailed to her last known address (which was in Texas). Further, petitioner also claims to have not received the August 4, 2011 *Notification of FS Overissuance* notices -- but she must have received them since on August 23, 2011 she contacted MiLES with regard to the overpayments.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

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, 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 Madison,
Wisconsin, this 23rd day of January, 2014

\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 January 23, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit