



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/154790

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 27, 2014, at Waukesha, Wisconsin.

NOTE: The record was held open to allow the Office of Inspector General (OIG) to submit a Notification of FS Overissuance, claim number [REDACTED] and a Notice of Tax Intercept Dated September 13, 2013. The faxed packet has been marked as Exhibit 40 and entered into the record.

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:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Kristing Deblare, PARIS Agent
Office of Inspector General
1 West Wilson Street
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident South Carolina.

2. On September 13, 2013, the Public Assistance Collections Unit sent to the Petitioner a notice advising him that any future tax refunds would be intercepted to satisfy a \$3,770.00 FoodShare overpayment. The notice was sent to the Petitioner at [REDACTED] (Exhibit 40)
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on January 15, 2014. (Exhibit 1)

DISCUSSION

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. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was September 13, 2013. As such, Petitioner needed to file her appeal by October 13, 2013. Her appeal was not filed until January 15, 2014. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal.

The Petitioner asserts that she did not timely receive the notice of tax intercept and as such, could not file an appeal with 30-days of the date of the notice. The Petitioner testified that she moved to South Carolina in December 2012/January 2013, but she did not report this change to the agency. The Petitioner further testified that her last address in Wisconsin, before moving to South Carolina in December 2012, was the [REDACTED] address that the agency used to notify her of the Tax Intercept. It should be noted that the [REDACTED] address is the home of Petitioner's mother and step-father and that Petitioner's mother was collecting the mail for Petitioner and her husband. Consequently, it is found that the agency correctly sent the notice to Petitioner's last known address and it is presumed that the notice was timely received at that address. State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994)

The Petitioner further asserts that having her tax refunds intercepted would cause financial hardship. Regrettably, I have found nothing in the statutes or administrative code that allows financial hardship as a good cause exception to an untimely appeal.

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, 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 11th day of March, 2014.

\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 March 11, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit