



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155075

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephone hearing was held on March 04, 2014.

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

There appeared at that time 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: Kristine DeBlare
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of South Carolina.
2. Petitioner resided in Wisconsin prior to relocating to South Carolina; while a Wisconsin resident, petitioner received Wisconsin FoodShare benefits.
3. FoodShare benefits were issued to Petitioner from Wisconsin from at least November, 2010, through March, 2013. Exhibit 1C.

4. On May 3, 2013, the agency sent petitioner overpayment worksheets and notices of FoodShare overissuances identifying the following claims:

██████████	11/30/10 – 12/31/10	\$ 631.00
██████████	01/13/11 – 05/31/11	\$2666.00
██████████	10/19/11 – 09/30/12	\$7628.00
██████████	10/12/12 – 03/31/13	\$3770.0

Exhibit 1A.

5. All notices and worksheets identified in Paragraph 4, above, were mailed to petitioner's correct address in ██████████, South Carolina. *Id.*
6. On June 4, 2013, the agency sent petitioner a repayment agreement. Exhibit 1B.
7. The agency sent Petitioner dunning notices on July 2, 2013, August 2, 2013, and September 4, 2013, reminding her of the FoodShare overissuance. Exhibit 1C.
8. On October 11, 2013, the respondent sent Petitioner a notice of tax intercept. Exhibit 2.
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 28, 2014. Exhibit P-1.
10. Petitioner did not appeal the underlying FoodShare overpayment prior to her instant appeal of the tax intercept.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Notifications of FoodShare Overissuance, FoodShare Overissuance Worksheets and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC benefits, and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added.

At hearing, petitioner conceded that she received the respondent's notices, but testified that she did not always open the mail that she received from Wisconsin. She stated that she has been trying to figure out who has been using her information, and assumes that it was her sister. When asked at hearing about the delay in filing her appeal, she stated that, after getting the notices she was calling trying to figure out what was going on.

The petitioner had a prior opportunity for a hearing on the merits of the FoodShare overpayment. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals no longer has jurisdiction over the merits of the appeal. An appeal of a negative action, including determination of FoodShare overissuance, must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). Because the petitioner did not request a hearing on the merits of the overpayment determination within said 90 day period, the Division does not now have jurisdiction to consider the merits of the overpayment determination, even in the context of a *timely* tax interception appeal. The petitioner received the overpayment notices, as they were sent to her correct address, and as the petitioner herself conceded at hearing. In these circumstances, the only issue left for consideration in the tax interception appeal is whether the overpayment balance being certified for collection is the correct amount (an accounting exercise).

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 October 11, 2013. As such, Petitioner needed to file her appeal by November 10, 2013. Her appeal was not filed until January 28, 2014. 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.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of March, 2014

\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 March 27, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit