



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155077

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 28, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 27, 2014, by telephone.

The issue for determination is whether the petitioner's appeal was filed on time.

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: Luisa McKy, ESS-Overpayment Spec.  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner supplied the county agency with an updated mailing address (she was homeless) of [REDACTED], Madison WI 53711 on July 25, 2013.

3. On July 26, 2013, the agency mailed written *Notification of FS Overissuance* to the petitioner at [REDACTED], Madison WI 53711. The *Notifications* advised the petitioner that she had been overpaid \$4,880 in FS benefits from January 1, 2010 through December 31, 2012. The petitioner received the Notifications, and left a message with the agency for someone to call her back regarding the overpayment on August 8, 2013.
4. The theory of the overpayment is that the petitioner did not report the absence and then death of her child in 2010, and that she continued to receive FS as though he was still a household member.
5. The petitioner did not file a hearing request until January 28, 2014.

### **DISCUSSION**

There is a **90**-day deadline for filing a hearing request to challenge a FoodShare overpayment. 7 C.F.R. § 273.15(g). The petitioner's January 28, 2014 filing is more than 90 days from the issuance of the July 26, 2013, *Notice*. The 90-day appeal time limit was identified on page 2 of the *Notification*. Therefore, her appeal is late, and I have no jurisdiction to review the merits of her appeal.

### **CONCLUSIONS OF LAW**

1. The petitioner's appeal was late, and this Judge has no jurisdiction to review the merits of her appeal.

**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 Madison,  
Wisconsin, this 28th day of February, 2014

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\sNancy J. Gagnon  
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 February 28, 2014.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability