



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155534

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Milwaukee Enrollment Service to recover FoodShare benefits (FS), a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether there is jurisdiction to review the determination of an FS overpayment that was calculated in 2009.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jose Silvestre
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 6, 2009, petitioner was notified that she was overpaid a total of \$3,873 in FS from January 1, 2008 through June 30, 2009, claim nos. [REDACTED] and [REDACTED]. Petitioner did not appeal, and beginning November 1, 2009, the agency began to recoup the overpayment.
3. Petitioner went off FS for a period of time and she made no payments on the overpayment. On July 15, 2011, the Public Assistance Collection Unit sent petitioner a notice telling her that it

intended to intercept her state tax refunds to recover the overpayment. The notice was sent to petitioner's current address.

4. The PACU intercepted petitioner's tax refund 2014 and the intercept resulted in the overpayment balance being paid in full.
5. Petitioner filed this appeal on February 17, 2014 to contest the amount of the overpayment.

DISCUSSION

Wis. Stat., §49.85(2)(a), 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, 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)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), 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.

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

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner filed this appeal to contest the agency's calculation of the FS overpayment amount. The problem is that petitioner filed this appeal far, far too late after the deadline to appeal. The notices of the overpayment were sent in October, 2009. Petitioner continued to receive FS, and every month her FS were reduced to recover the overpayment. If petitioner disagreed with the overpayment claim, she had to appeal when the claim was made and the recoupment started, not four years later.

I note in addition that an appeal of a tax intercept notice must be filed within 30 days of the notice. Wis. Stat., 49.85(3)(a)2. The tax intercept notice was sent to petitioner in July, 2011, over two years before petitioner filed this appeal.

CONCLUSIONS OF LAW

Petitioner's appeal contesting the amount of an FS overpayment claim is untimely.

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 17th day of March, 2014

\sBrian C. Schneider
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 17, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit