



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155535

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Sawyer County Human Services in regard to FoodShare benefits (FS), a hearing was held on March 18, 2014, at Hayward, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare.

There appeared at that time and place 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: Beulah Garcia

Sawyer County Human Services
10610 Main Street
PO Box 730
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Sawyer County.
2. The county agency notified the petitioner on February 4, 2013, that it would seek to recover a \$1,201 overpayment of FoodShare that allegedly occurred from March 1, 2012, through October 31, 2012.

3. On February 11, 2013, the petitioner signed an appeal and sent it to the Division of Hearings and Appeals. In that appeal she checked the box for “Medical Assistance” and the box within the medical assistance heading for “Overpayment.” She added an arrow to the form that pointed to the medical assistance overpayment box. She added no arrows pointing to any other areas. She did not check the box for “FoodShare” or the box under FoodShare for “Overpayment.” Her comments on her appeal letter referred only to the medical assistance matter.
4. The petitioner had a hearing before the Wisconsin Division of Hearings and Appeals on March 20 2013. That hearing pertained solely to her medical assistance overpayment. A decision issued that month also referred solely to her medical assistance overpayment.
5. The Department began recouping the petitioner’s FoodShare overpayment on July 18, 2013.
6. The petitioner appealed her FoodShare overpayment on February 14, 2014.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). The county agency notified the petitioner on February 4, 2013, that it would seek to recover \$1,201 in FoodShare provided to her from March 1, 2012, through October 31, 2012. FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The petitioner first filed an appeal of the FoodShare overpayment finding on February 14, 2014, or 375 days later. She contends that she thought she was appealing the overpayment when she appealed a contemporaneous medical assistance overpayment on February 11, 2013. The medical assistance decision ruled in her favor. She testified that she believed that the medical assistance decision prevented the Department from recovering her FoodShare overpayment.

I find no support for her contention. In the appeal she filed in February 2013, she checked the box for “Medical Assistance” and the box within the medical assistance heading for “Overpayment.” She added an arrow to the form that pointed to the medical assistance overpayment box. She added no arrows pointing to any other areas; she did not check the box for “FoodShare” or the box under FoodShare for “Overpayment.” Her comments on her appeal letter referred only to the medical assistance matter. I listened to the recording of the original hearing held in March 2013. I indicated at the beginning of the hearing that it pertained to a medical assistance overpayment and did not mention a FoodShare overpayment. No testimony or discussion concerning FoodShare was raised at any point during that hearing. The decision issued after that hearing pertained solely to medical assistance and did not mention FoodShare. Finally, the Department began recovering the FoodShare overpayment from the petitioner’s allotment on July 18, 2013. Even after this began occurring, she did not file an appeal for another 6 ½ months. Because she did not appeal the agency’s decision within 90 days, I have no jurisdiction to consider it.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to consider the petitioner’s FoodShare appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal 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

\sMichael D. O'Brien
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.

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