



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155728

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 19, 2014, at Milwaukee, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the Petitioner's state income tax refund to collect an overpayment of FoodShare benefits

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: Jose Silvestre, IM Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 15, 2008, the Department sent a written notice of negative action – an income tax refund interception notice -- to the petitioner at her correct and still current address.

3. The petitioner filed a hearing request with the department on February 26, 2014.
4. The negative action in this case was notification of income tax refund interception. Specifically, the interception notices (state and federal) declare that an unpaid FS debt of \$703 (claim # [REDACTED], overpayment period of July through October 2007) remained for possible interception. The state notice also advised the petitioner to file an appeal of the interception certification within 30 days (the federal notice says 60 days) of the August 15, 2008, notices.
5. The petitioner repaid \$187 of the overpayment from FS claim # [REDACTED] prior to May 2013. Payments were not made from at least May 2013 onward. The Department recovered the remaining balance due via tax refund interception on February 11, 2014, leaving a current balance of zero remaining for collection.
6. The petitioner admits receiving the FS overpayment notice issued on April 23, 2008, and admits she did not file a fair hearing request then to challenge the merits of the overpayment determination. The petitioner did not establish non-receipt of the tax interception notices from August 2008.

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. An appeal of a negative action (overpayment) by an agency concerning FS must be filed within 90 days of the negative action or notice, whichever is later. 7 C.F.R. § 273.15. *An appeal from a state tax refund interception notice must be filed within 30 days of the date of the interception notice. Wis. Stat. §49.85(3)(a)2.* The petitioner's February 26, 2014, appeal is more than 30 days from the August 2008, interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2008 interception decision.

CONCLUSIONS OF LAW

1. The petitioner's February 2014 appeal was untimely with respect to the Department's August, **2008** refund interception certification.

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 7th day of April, 2014

\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 April 7, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit