



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/155999

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 12, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Marinette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2014, at Marinette, 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: Sandra Waugus, fraud investigator  
Marinette County Department of Human Services  
Wisconsin Job Center Suite B  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.

2. On January 17, 2014, the Department sent a written notice of negative action to the petitioner at his correct address. The notice was not returned to the Department as undelivered.
3. The petitioner did not deny receipt of the interception notice.
4. The petitioner filed a hearing request with the department on March 12, 2014.
5. The negative action in this case was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$2,392.00 remained for possible interception claims # [REDACTED], # [REDACTED]). The claims cover the periods of September 1, 2012 – August 31, 2013, and September 1, 2013 – September 30, 2013, and were caused by agency error Milwaukee County). The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the January 17, 2014, notice.
6. The Department has not yet recovered these funds.

### 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 by a county agency concerning MA must be filed within 45 days of the date of the action; for FS eligibility, the filing deadline is 90 days. Section 49.45(5), Wis. Stats. *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 March 12, 2014, appeal is more than 30 days from the January 17, 2014, interception notice. Thus, no jurisdiction exists for me to review the correctness of the January 17, 2014 interception decision.

The petitioner is not currently eligible for FS, so the overpayment cannot be recouped from current FS benefits. I have reviewed the "compromise claim"/hardship provision at 7 C.F.R. § 273.18(e)(3)(iv)(M), and do not see that it applies to this case.

### CONCLUSIONS OF LAW

1. The petitioner's March 12, 2014, appeal was untimely with respect to the Department's January 17, 2014 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 20th day of May, 2014

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 20, 2014.

Marinette County Department of Human Services  
Public Assistance Collection Unit