



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/156299

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephone hearing was held on April 23, 2014. The record was held open for a period of 10 days to allow the petitioner to supplement the record. Additional documentation was received on May 15, 2014.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to consider petitioner's appeal.

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: Kristine DeBlare
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The respondent notified the petitioner on May 3, 2013, of an overissuance of FoodShare benefits between November, 2010 and March, 2013, and that she must repay this overpayment. The notice informed her that she must file any appeal of this action within 90 days.
3. The petitioner appealed the overpayment finding on March 18, 2014. Of note, petitioner also filed an appeal of a tax intercept pertaining to the FS overpayment; that appeal was filed on or about January 28, 2014.
4. Petitioner received the overpayment notices identified at Finding of Fact no. 2 and at Exhibits 1A-1E.

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 respondent notified the petitioner on May 3, 2013, that it would seek to recover the FoodShare benefits that her household received between November, 2010 and March, 2013. Exhibits 1A-1E and 2. 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. Adm. 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 admits receiving the notice but did not appeal the overpayment finding until March 18, 2014, or 319 days later.¹ Because she did not appeal the agency’s decision within 90 days, I have no jurisdiction to consider it.

The petitioner credibly testified that her identity was misappropriated by relatives in Wisconsin, with the intent to improperly obtain benefits. The petitioner reported this matter to Wisconsin authorities. She testified that, while she received the notices, she was sure that this was a mistake that would be sorted out. I note to petitioner that I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, petitioner’s appeal is untimely; no exception applies here, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner’s appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

¹ Even if I were to consider the tax intercept appeal filing date for purposes of determining timeliness, the appeal is still late. The tax intercept appeal was filed 270 days following notice of the overpayment.

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 29th day of May, 2014.

\sPeter McCombs
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 May 29, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability