



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/158602

PRELIMINARY RECITALS

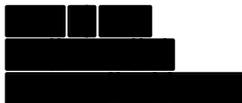
Pursuant to a petition filed June 24, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a hearing was held on July 16, 2014, by telephone.

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 the following persons:

PARTIES IN INTEREST:

Petitioner:



;

Respondent:

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

By: Tom Miller, ES Supervisor
Western Region for Econ. Assistance Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Vernon County.
2. On May 16, 2014, the Department sent a written notice of negative action to the petitioner at his correct address.
3. The petitioner filed a hearing request with this Division on June 24, 2014.

4. 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 \$642 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the May 16, 2014, notice.
5. The Department mailed a *Notice of Foodshare Overissuance* (claim # [REDACTED]) to the petitioner regarding this “agency error” claim on April 4, 2013. The petitioner did not timely appeal from that *Notice*.
6. The petitioner did not assert that he did not receive the May 2014, interception notice. Rather, he indicated that it would be difficult for him to repay this claim.

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 typical filing deadline is 90 days. Section 49.45(5), Wis. Stats. However, 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 June 24, 2014, appeal is more than 30 days from the May 16, 2014, interception notice. Thus, no jurisdiction exists for me to review the correctness of the May 2014 interception decision.

CONCLUSIONS OF LAW

1. The petitioner’s June 24, 2014, appeal was untimely with respect to the Department’s May 16, 2014 refund interception certification and notification.

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 August, 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 August 20, 2014.

Vernon County Human Services
Public Assistance Collection Unit