



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/160839

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 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 October 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept to the Petitioner.

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 Sylvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 15, 2013, the agency issued Notifications of FS Overissuance and worksheets to the Petitioner informing her that the agency intends to recoup an overissuance of FS benefits in the amount of \$1009 for the period of December 1, 2011 – November 30, 2012 and an overissuance

of FS benefits in the amount of \$2090 for the period of December 1, 2012 – September 30, 2013. The notices further informed the Petitioner of the right to a hearing by filing an appeal within 90 days of the date of the notices.

3. On November 4, 2013, the agency issued a Repayment Agreement to the Petitioner. On December 3, 2013, January 3, 2014 and February 4, 2014, the agency issued dunning notices to the Petitioner.
4. On March 14, 2014, the agency issued a notice of state tax intercept to the Petitioner informing her that state tax refunds in the amount of \$3099 would be intercepted due to unpaid public assistance debts. The notice also informed the Petitioner of the right to a hearing by filing an appeal within 30 days of the date of the notice.
5. On September 25, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by a county or state agency concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). An appeal of an action to intercept state tax refunds must be filed within 30 days of the date of the notice. Wis. Stats. §§ 49.85(4) and 227.44. The Petitioner's appeal was filed 345 days after the date of the overissuance action and 195 days after the date of the tax intercept notice. Thus, it was untimely and to both actions and no jurisdiction exists for considering the merits of the overpayment case or the tax intercept case.

CONCLUSIONS OF LAW

The Petitioner's appeal was untimely.

THEREFORE, it is

ORDERED

The Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of November, 2014

\sDebra Bursinger
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 November 4, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit