



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/160961

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 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 hearing was held on November 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent multiple Notification of FoodShare Overissuance notices all dated June 28, 2013. They were mailed to Petitioner at [REDACTED] in Milwaukee. Petitioner was evicted from this address but not until the fall of 2011.

3. The overpayment notices informed Petitioner that she had been overissued FoodShare benefits totaling \$3231.00 during the period of April 1, 2011 through February 2013.
4. The reason for the overissuance was that Petitioner's son was not was living in her home but was out of State.
5. The overpayment notices did contain appeal instructions that informed Petitioner that an appeal had to be filed within 90 days of the date of the notice.
6. Petitioner filed this appeal on October 1, 2014.
7. Petitioner had repaid all but about \$1276.00 of the overpayment by the date of this hearing.
8. The agency did initiate administrative disqualification proceedings against Petitioner for an intentional program violation (IPV) for reporting her son in the home when he was not there. On April 29, 2014 Petitioner signed a waiver of the right to the IPV hearing.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See *FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR §273.15(g).

Petitioner filed this hearing request contending that her son was back in her home as of May 2012 and that she should not have to repay the balance of this overpayment. She did submit school records that support her contention that her son was back in Wisconsin and in her home in mid-2012.

Nonetheless, the Division of Hearings and Appeals, by law, lost authority to make a decision here after the appeal deadline passed so I must conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely file her appeal.

I will note, however, that if the Division of Hearings and Appeals still had jurisdiction to decide the merits of this case I would likely reverse the overpayment from August 2012 through February 2013. The school records submitted by Petitioner do indicate her son was enrolled in school in Wisconsin from July 23, 2013 through the remainder of this overpayment time period. I am unaware of any law or policy preventing the agency from making this adjustment.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That this 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 28th day of November, 2014

\sDavid D. Fleming
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 28, 2014.

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