



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/161481

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 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 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal of FoodShare (FS) overissuance claim number [REDACTED] 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: Nadine Stankey
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 20, 2013 the agency sent Petitioner a notification of FoodShare (FS) overissuance for Claim Number [REDACTED] informing her that she over issued \$195.36 in FS benefits from May 7, 2012 to September 30, 2012. The notice was sent to [REDACTED]. That address is the

Human Services Building in Milwaukee. Petitioner testified that she received and continues to receive correspondence regarding her benefits at that address.

3. On October 27, 2014 the Division of Hearings and Appeals received Petitioner's Request for Fair Hearing.

DISCUSSION

An Administrative Law Judge can only hear cases on the merits if jurisdiction is present under law to do so. There is no jurisdiction if a hearing request is untimely. The Department is required to give written notice of the negative action concerning MA to petitioner. 42 C.F.R. § 431.211. The purpose of the notice is to advise petitioner that he has 90 days from the date of the notice to submit a request for a fair hearing. WI Stat § 49.152(1), WI Admin Code §HA 3.05(3)(a), *FoodShare Wisconsin Handbook*, § 6.4.1. The Division of Hearings and Appeals has previously held that the 90-day time limit for appealing does not begin to "run" until a timely and adequate notice has been issued to petitioner.

The negative action in this case was the determination that petitioner was over issued \$195.36 in FS benefits which are subject to recovery. Petitioner was notified of that determination via notification dated November 20, 2013. Petitioner's request for hearing was filed with the Division of Hearings and Appeals on October 27, 2014 and, as such, her appeal was received over 11 months after the effective date of the negative action. Accordingly, petitioner's hearing request is untimely and I do not have jurisdiction to consider the merits of the case.

I do not find Petitioner's statement that she did not receive the November 20, 2013 notice credible. At the beginning of the hearing the undersigned ALJ asked Petitioner if [REDACTED] was still the best address to send the written decision. Petitioner said that is the best address because she sometimes does not receive mail at her home address, and knows that she will receive the decision at the [REDACTED] address. When the undersigned ALJ asked Petitioner if she had received the November 20, 2013 Petitioner said that she had not received that notice, and that she does not always get her mail at [REDACTED]. I do not find that statement credible. The November 20, 2013 notice was sent to Petitioner's correct address, and I must assume that she received that notice. Petitioner receives other notices at that same address with no issue as evidenced by other appeals she has filed with the Division of Hearings and Appeals.

However, out of consideration for petitioner, I will explain that even if she had submitted a timely appeal, overpayments must be recovered. In this case the overpayment occurred when Petitioner trafficked her FS card at [REDACTED] grocery store. ALJ Kenneth Duren previously found that the agency met the higher burden of clear and convincing evidence in demonstrating that Petitioner had committed an intentional program violation by trafficking her FS card. Based upon that decision, the county agency would have met the lower preponderance burden of proving that the overpayment occurred in this case.

CONCLUSIONS OF LAW

Petitioner's appeal for FS overissuance claim number [REDACTED] is not timely.

THEREFORE, it is

ORDERED

That the Petition 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 19th day of November, 2014

\sCorinne Balter
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 19, 2014.

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