



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
Redact
[Redacted]

DECISION

FTI/161757

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Sauk County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on November 26, 2014.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Kay Kippley, ESS
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Sauk County, Wisconsin.

2. The following Claim was established against petitioner for an overpayment of FS: Claim Number Redact; April 1, 2013 to June 30, 2013; outstanding balance of \$350.72 (original amount was \$498.00)
3. Petitioner received written notice from State of Wisconsin, dated July 11, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$350.72 to repay the FS overpayment identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing.
4. Petitioner requested a Hearing concerning the FS tax intercept by a *Request For Fair Hearing* form dated November 5, 2014 and received by DHA on November 7, 2014 via U.S. Mail postmarked November 6, 2014.

DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2011-12); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated July 11, 2014. Petitioner's request for a Hearing was not made until November 2014. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

Petitioner testified that she did not request a Hearing sooner because of medical problems. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 15th day of December, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 15, 2014.

Sauk County Department of Human Services
Public Assistance Collection Unit