



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/161656

PRELIMINARY RECITALS

Pursuant to a petition filed November 03, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 13, 2015, at Milwaukee, Wisconsin.

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

NOTE: The record was held open to allow the Petitioner's Power of Attorney (POA) to submit documentation regarding where Petitioner's granddaughter was residing between August 2012 and January 2014. On January 27, 2015, the Petitioner's POA submitted paystubs, tuition statements, W-2s, an acceptance letter to [redacted] and a tuition statement for [redacted]. The packet has been marked collectively as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

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

By: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 30, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner two FoodShare Overpayment Notices:
 - a. Claim number [REDACTED], for the period of 08/01/2012 to 07/31/2013, in the amount of \$2,895.00, and
 - b. Claim number 390040793, for the period of 08/01/2103 to 01/31/2014, in the amount of \$1,418.00.

(Exhibit 2, pgs. 64-76)

3. This overpayment occurred, because the Petitioner reported her granddaughter in her household, but did not report the granddaughter's income. (Exhibit 2, pg. 4; Testimony of Ms. Johnson)
4. The Petitioner's son, on behalf of Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 3, 2014. (Exhibit 2, pg. 2)

DISCUSSION

As discussed above, in the Findings of Fact, the underlying overpayment was based upon the Petitioner reporting her granddaughter in the home, but not reporting the granddaughter's income. Petitioner's POA asserts that if an overpayment occurred, it was because the Petitioner over-reported the number of people in her household, not because she underreported income. Petitioner's POA testified that the granddaughter did not live with the Petitioner, but was in Whitewater attending college and participating in the meal plan at the dorms. It should be noted that the POA testified that the granddaughter in question is the POA's daughter.

The Petitioner's POA provided documentation, including paystubs, tuition statements, W-2s, an acceptance letter to [REDACTED] and a tuition statement for [REDACTED], to show that the granddaughter, was not, in fact, living with the Petitioner during the time in question. However, it should be noted that the residence listed on the documentation is the same as the POA's address.

The documentation has been forwarded to the agency for review. However, the Division of Hearings and Appeals does not have any jurisdiction to review the correctness of the agency's overpayment determination, because the Petitioner's appeal was filed too late.

An appeal of a negative action, including an overpayment determination, must be filed within 90 days of the date of that action. *7 CFR, §273.15(g); See also FoodShare Wisconsin Handbook (FSH) §6.4.1*

In the case at hand, the date of action was June 30, 2014, when the agency sent the Petitioner the overpayment notices. Consequently, the Petitioner needed to file an appeal by September 28, 2014. The Petitioner did not file an appeal until November 3, 2014, after the 90-day appeal deadline expired. Consequently, the Petitioner's appeal is untimely and no jurisdiction exists to hear the merits of her appeal.

While the Division of Hearings and Appeals no longer has jurisdiction over the case, the agency can, under FoodShare Wisconsin Handbook § 7.4.1.1, take corrective action on its own, **if** it finds it made a mistake and 1) rescind the overpayment that was based upon an under reporting of income 2) re-determine the overpayment, based upon the Petitioner over reporting her assistance group size as 2, **if** it was, in fact, 1 (one) and 3) issue to the Petitioner new overpayment notices.

It should be noted that under 7 CFR §273.18(e)(8)(ii), the state agency must discharge a claim when it finds that the claim is invalid:

7 CFR §273.18 (e)(8)(ii): The following is our claim termination policy:

As a State agency, if . . .	Then you . . .	Unless . . .
(A) you find that the claim is invalid	must discharge the claim and reflect the event as a balance adjustment rather than a termination	it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).
(B) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(C) the claim balance is \$25 or less and the claim has been delinquent for 90 days or more	must terminate and write-off the claim	other claims exist against this household resulting in an aggregate claim total of greater than \$25.
(D) you determine it is not cost effective to pursue the claim any further	must terminate and write-off the claim	we have not approved your overall cost-effectiveness criteria.
(E) the claim is delinquent for three years or more	must terminate and write-off the claim	you plan to continue to pursue the claim through Treasury's Offset Program.
(F) you cannot locate the household	may terminate and write-off the claim	
(G) a new collection method or a specific event (such as winning the lottery) substantially increases the likelihood of further collections	may reinstate a terminated and written-off claim	you decide not to pursue this option.

As discussed above, the agency, at its discretion, can review the Petitioner’s case and take corrective action, if the agency finds that such corrective action is warranted.

CONCLUSIONS OF LAW

The Petitioner’s appeal is untimely.

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 Milwaukee,
Wisconsin, this 27th day of January, 2015.

\sMayumi M. Ishii
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 January 27, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability