



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/163782

PRELIMINARY RECITALS

Pursuant to a petition filed February 09, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on March 04, 2015, at Madison, Wisconsin.

The issue for determination is whether this 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: Diane Peterson

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin at times pertinent to this appeal.
2. The agency sent a tax intercept notice to petitioner on 10/17/14.
3. Petitioner filed a request for hearing on 2/9/15.

DISCUSSION

Wis. Stat. § 49.85, provides that the Department shall, at east annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayments of public assistance, including Food Stamps (FS). See also, Wis. Stat. § 49.125; Wis. Stat. § 49.195(3); and, 7 U.S.C. § 2022.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Wisconsin Department of Revenue for setoff from his/her state income tax refund, and must inform the person that s/he may appeal the decision by requesting a hearing. Wis. Stat. § 49.85 (4).

Wis. Stat. § 49.85(3)(b) provides that the DWD must give the person whose tax refund is to be intercepted at least 30 days written notice of the impending intercept by sending the required certification notice to his or her last known address. Wis. Stat. § 49.85(3)(b)(2) also requires that the notice issued inform the person subject to the intercept that he or she has *30 days from the date of the notice to appeal the certification action*. Wis. Stat. § 49.85(4)(b), provides for an appeal contesting the certification under Wis. Stat. § 227.44.

The hearing right is described in Wis. Stat. § 49.85(4)(b) as follows:

If a person has requested a hearing under this subsection, the department of workforce development shall hold a contested case hearing under s.227.44, except that the department of workforce development may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Wis. Stat. § 49.85(4)(b).

In this case, the Department mailed a state income tax refund intercept notice to the petitioner concerning the FS overissuance claims on October 17, 2014, to her at her last known address of record with the Department.

The state income tax refund intercept statute requires mailing of the state income tax refund interception notification to the last known-address of the former benefits recipient, and no more. In this case, the request for hearing was filed nearly 3 months late.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

That this matter 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 Madison,
Wisconsin, this 10th day of March, 2015

\sJohn P. Tedesco
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 March 10, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit