



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/164025

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Juneau County Department of Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on March 10, 2015.

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]
[REDACTED]
[REDACTED]

Respondent:

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

BY: Monica Johnson, Overpayment Specialist
Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County, Wisconsin.

2. The following 3 Claims were established against petitioner for overpayments of FS spanning the time period December 10, 2008 to August 31, 2011 in the original total amount of \$23,580.00 with a current outstanding balance of \$8,371.70:
 - Claim Number [REDACTED]; December 10, 2008 to November 30, 2009; original amount \$8,065.00;
 - Claim Number [REDACTED]; December 12, 2009 to November 30, 2010; original amount \$8,990.00; and,
 - Claim Number [REDACTED]; December 1, 2010 to August 31, 2011; original amount \$6,525.00.
3. Petitioner received written notice from State of Wisconsin, dated February 17, 2012 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 \$23,580.00 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. Exhibit #A4.
4. On February 18, 2015 petitioner telephoned DHA and orally requested a Hearing concerning the FS tax intercept which was reduced to writing by DHA staff. Exhibit #A5.

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. (2013-14); 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 February 17, 2012. Petitioner's request for a Hearing was not made until February 18, 2015. 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 receive the February 17, 2012 tax intercept notice. This is not credible for several reasons. First, during 2012 petitioner had many notices sent to her for both the FS program and the Medical Assistance ["MA"] program using that same address and none of them were returned. Second, the address used was the address of the person who is now her husband and with who she has had 3 children the first of which was born in 2007. Third, an investigation established that she was living at that address with her now husband and their children. She was sent a letter dated August 12, 2011 informing her of this. Fourth, on August 15, 2012 petitioner returned to the County a form that had been sent to her at that address and, by that form, informed the County of a different address which was on the same street. Finally, it is noted that the address where she now claims to live is on the same street where the February 17, 2012 tax intercept notice was sent.

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 and DHS may certify the amount of \$8,371.70 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the 3 FS overpayment Claims identified in *Finding of Fact #2*, above.

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 24th day of March, 2015

\sSean P. Maloney
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 24, 2015.

Juneau County Department of Human Services
Public Assistance Collection Unit