



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FTI/164080

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 18, 2015, at Milwaukee, 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 petitioner name]

Respondent:

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

By: [Redacted signature]
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]) is a resident of Milwaukee County.
2. Petitioner had received FS in 2012.
3. Petitioner received mail at [Redacted] in Milwaukee beginning around 2009.

4. In November 2013, the agency prepared a FS administrative disqualification hearing notice and sent it to petitioner at [REDACTED] in Milwaukee.
5. Petitioner did not appear for the hearing on December 12, 2013.
6. ALJ Bursinger issued a decision sustaining the IPV in case number FOF-152977. The decision was issued in January 2014. The decision was sent to the same [REDACTED] address. Petitioner did not appeal.
7. On 1/17/14, the agency sent a notice to petitioner informing him that he was liable for a FS overissuance in the amount of \$185.89. Petitioner did not respond.
8. On 6/13/14, the agency issued a tax intercept notice for the unpaid overissuance of 185.89.
9. In November 2014, petitioner changed his address with the agency from the [REDACTED] address to a new address on [REDACTED].
10. The Department is presently recouping a past overissuance in the amount of \$38 per month.
11. Petitioner requested a hearing by letter faxed to DHA on February 20, 2015.

### DISCUSSION

Petitioner states he does not understand the basis for the agency's current withholding of a portion of his FS allotment to recoup a past overissuance. An administrative law judge can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS, including an overpayment determination, must be filed within 90 days of the date of that action. 7 C.F.R. § 273.15(g). The petitioner's appeal was filed more than a year after the effective date of the action – the date of the overpayment notice. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case. There is no relevant exception under law, and I possess no authority to reach the underlying merits of the FS overpayment determination of 1/17/14. Petitioner had various opportunities to request hearing on the overpayment or to appear for the IPV hearing. At either of those such proceedings, petitioner could have challenged the overissuance on its merits. It is simply too late to do so now. Petitioner was receiving mail at the [REDACTED] address, but he claims he did not receive nearly all of the mailings. They all appear to have been addressed properly. I recognize the legal rebuttable presumption that properly addressed mail that is sent is delivered properly. Petitioner did not rebut this presumption. This hearing request is untimely.

### CONCLUSIONS OF LAW

The appeal is untimely

**THEREFORE, it is**

**ORDERED**

That this appeal 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 17th day of April, 2015

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\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 April 17, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit