



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FTI/165244

PRELIMINARY RECITALS

Pursuant to a petition filed April 09, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On December 12, 2012, the agency sent the Petitioner a Notification of FoodShare Overissuance, referencing Claim Numbers [Redacted], [Redacted], [Redacted], [Redacted], [Redacted], and [Redacted], and indicating that her household was overissued FoodShare benefits in the amount of \$29,362.00 for the period of July 1, 2012 to April 20, 2013.
3. The agency sent Petitioner a repayment agreement on January 3, 2013.

4. On January 18, 2015, following the filing of a Fair Hearing request by the petitioner, the Division of Hearings and Appeals issued a decision on a related matter, in case FOO-145931.
5. The agency sent the Petitioner dunning notices (reminders about the debt) on February 4, 2013, March 4, 2013 and April 3, 2013.
6. On May 17, 2013, the agency sent the Petitioner a notice of State tax intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt."
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 9, 2015. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal because she is concerned with clearing her name and because she cannot afford to feed her household.

"All adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household... The following are responsible for paying a claim... Each person who was an adult member of the household when the overpayment or trafficking occurred..." *FSH* §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)

Based upon the foregoing regulations and policy, the Petitioner is liable for the underlying Foodshare overpayment, because she was an adult member of the food unit.

With regard to the underlying overpayment, the Petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's April 9, 2015, appeal was filed well beyond 90-days from the date of the December 12, 2012, overpayment notice. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the tax intercept notice was May 17, 2013. As such, Petitioner needed to file her appeal by June 6, 2013. Petitioner did not file her appeal until April 9, 2015. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal of the state tax intercept.

CONCLUSIONS OF LAW

1. Petitioner is liable for any FoodShare overpayment to her household/food unit.
2. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
3. Petitioner's appeal of the State Tax Intercept is untimely.

THEREFORE, it is**ORDERED**

That the petition is dismissed in its entirety.

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 29th day of June, 2015.

\sPeter McCombs
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 June 29, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit