



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/165486

PRELIMINARY RECITALS

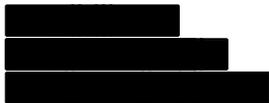
Pursuant to a petition filed April 20, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on May 12, 2015, at Waukesha, Wisconsin. The record was held open to allow the Petitioner to submit additional information. Additional information was submitted on May 13, 2015 and the record was closed.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept for unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kathy Jones
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of NA.

2. Petitioner was receiving FS benefits in Wisconsin when she went to Texas in or about July, 2011 to visit family. While visiting, Petitioner was arrested on August 3, 2011. She was subsequently convicted and incarcerated until January, 2012. On November 1, 2011, the Petitioner completed a Six Month Report Form and submitted it to the agency. Petitioner did not inform the agency that she was incarcerated or in Texas.
3. On January 26, 2012, mail sent to the Petitioner's Wisconsin address was returned to the agency. The agency contacted the Petitioner. The Petitioner stated she had not moved and was receiving some of her mail.
4. In or about March and April, 2012, the Petitioner was hospitalized at [REDACTED] for an extended period. The Petitioner did not contact the agency to inform them that she was hospitalized.
5. On April 24, 2012, the agency contacted the Petitioner. She stated she was currently in Texas but returning to Wisconsin in one week. She reported she is back and forth between Texas and Wisconsin due to vacations and a son's wedding. She reported her neighbor picks up her mail.
6. The Petitioner contacted the agency on the following dates regarding the renewal of her FS benefits: April 27, 2012, May 22, 2012, May 23, 2012, June 7, 2012 and June 8, 2012.
7. On July 20, 2012, the agency received information from the State of Texas that Petitioner consistently used her EBT FS card in Texas.
8. On September 21, 2012, the agency issued a Notice of FS Overissuance and worksheets to the Petitioner at [REDACTED] WI informing the Petitioner that the agency determined she had been overissued FS benefits in the amount of \$966 for the period of August, 2011 – August, 2012 based on failure to report a change in residence. The notice informed the Petitioner of the right to appeal the determination by filing a request for a hearing within 90 days of the date of the notice.
9. On September 24, 2012, the agency issued Notices of FS Overissuance to the Petitioner at the Okauchee address informing the Petitioner that the agency seeks to recover an overissuance of FS benefits in the amount of \$879 for the period of August 1, 2011 – July 31, 2012 and \$87 for the period of August 1 – 31, 2012 for failure to report residence change. The notices informed her of the right to appeal by filing a request for a hearing within 90 days of the date of the notice.
10. On October 22, 2012, the Petitioner contacted the agency and reported she was in Texas for a death in the family. She also reported she was hospitalized. She stated she is not living in Texas and still resided at the same address in Okauchee.
11. On October 30, 2012, the Petitioner submitted an application for Medicaid Purchase Plan, Medicare Premium Assistance and FS benefits to the agency.
12. On November 2, 2012, the agency issued a dunning notice to the Petitioner at the Okauchee address. On December 4, 2012 and January 3, 2013, the agency issued dunning notices to the Petitioner at [REDACTED], TX 75071.
13. On November 6, 2012, a phone interview was completed with the Petitioner. She reported she was still in Texas but returning to Wisconsin soon.
14. On November 7, 2012, the agency issued a Notice of Action and Proof Needed to the Petitioner at the McKinney address requesting proof of Wisconsin residency, checking account information, employment information and medical cost information. The due date for the items was November 28, 2012. The Petitioner did not provide the requested information by the due date.
15. On November 20, 2012, the agency received a typewritten statement from [REDACTED] who stated that his address is that of the Petitioner's on Truman St. in McKinney TX, that he had been married to the Petitioner since May 6, 2012 and that she had resided in Texas since May, 2011. The

statement further indicated that at no time did the Petitioner reside at the Okauchee address during the past 18 months.

16. On November 29, 2012, the agency issued a Notice of Decision to the Petitioner at the McKinney address informing her that her October 30, 2012 application for healthcare benefits and FS benefits was denied due to the Petitioner not living in Wisconsin. The notice also informed the Petitioner of the right to an appeal by filing a request for hearing by January 14, 2013 for healthcare and February 28, 2013 for FS.
17. On February 15, 2013, the agency issued a tax intercept notice to the Petitioner at the Okauchee address informing her that \$966 in unpaid public assistance debt would be intercepted from her state taxes. The notice also informed the Petitioner that she had 30 days from the date of the notice to file an appeal of the matter with the Division of Hearings and Appeals.
18. On May 3, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals. The case was designated as Case No. FTI/149234. On June 25, 2013, a hearing was held before the Division of Hearings and Appeals. On July 19, 2013, a decision was issued finding the Petitioner's appeal was untimely with respect to the September 24, 2012 FS overissuance. The decision also concluded that the appeal was timely with respect to the tax intercept and that the agency properly issued the tax intercept. The decision informed the Petitioner of the right to request a rehearing within 20 days of the date of the decision and the right to appeal the decision to Circuit Court within 30 days.
19. On April 20, 2015, the agency issued a notice to the Petitioner at the McKinney address informing her that it had received a payment of \$137.10 toward her unpaid FS overpayment debt and that her remaining balance is \$828.40

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). An appeal of a tax intercept by an agency must be filed within 30 days of the date of the notice. A request for a rehearing of a DHA decision must be filed within 20 days of the date of the decision.

In this case, there is no matter over which I have any jurisdiction. The Petitioner disputes the merits of the overpayment action as well as the merits of the tax intercept case.

The overpayment notices were issued to the Petitioner at the Okauchee address. The Petitioner testified that she did not move to Texas and that she made arrangements for her mail pick up while she was in Texas. Despite those arrangements, she testified she did not receive the notices. The evidence demonstrates that numerous notices were issued to her throughout 2012 and 2013 at the Okauchee address as well as the Texas address. She was not incarcerated or hospitalized at the time of the issuance of the overpayment notices. The agency properly sent the notices to the address of record. The Petitioner was responsible for providing a proper address for timely receipt of notices. She did not do so.

Further, I note that the ALJ in Case No. FTI/149234 determined that her appeal on May 3, 2013 was not timely with respect to the overpayment notices. The Petitioner did not file a request for a rehearing of that decision within 20 days and did not file a request for a circuit court review. Therefore, I conclude I do not have jurisdiction to rule on the merits of the overpayment action as she has already had a hearing on that issue and a final determination has been made.

With regard to the tax intercept, the ALJ in FTI/149234 found the Petitioner had filed an appeal of the tax intercept in a timely manner but concluded the agency properly issued a tax intercept. The Petitioner did

not file a request for a rehearing of that decision within 20 days and did not file a request for a circuit court review. Therefore, I do not have jurisdiction to rule on the tax intercept action.

In summary, I have no jurisdiction over the overpayment matter as the Petitioner's appeal is not timely and the issue of timeliness was already decided in FTI/149234. In addition, I have no jurisdiction over the tax intercept matter as the Petitioner's appeal is not timely and the action was already determined to have been done properly in FTI/149234. There is no other agency action that has been taken for which the Petitioner has an appeal right.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely with regard to the FS overpayment or the tax intercept notice. In addition, those matters have already been decided by Case No. FTI/149234. There is no other agency action for which the Petitioner has an appeal right.

THEREFORE, it is

ORDERED

That the Petitioner's 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 Milwaukee,
Wisconsin, this 17th day of June, 2015

\sDebra Bursinger
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 17, 2015.

Waukesha County Health and Human Services
Public Assistance Collection Unit