



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FTI/165690

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 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 (PACU) in regard to FoodShare benefits (FS), a hearing was held on May 19, 2015, by telephone.

The issue for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, PARIS agent
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Pennsylvania.
2. On April 10, 2014, the Department mailed a Notification of FS Overissuance and worksheet to the petitioner at his last known mailing address of 6248 Station Street, Pittsburgh PA. The

*Notification* was not returned as undelivered, and the petitioner telephoned the Department's agent, Redact, on April 15, 2014, to complain about the overpayment. The *Notification* advised the petitioner to file any appeal of the overpayment within 90 days.

3. The Department mailed written notice of a negative action to the petitioner's correct address of 6248 Station Street, Pittsburgh PA on **September 12, 2014**. The negative action was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$1,145 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the September 12, 2014, notice.
4. The petitioner filed a hearing request with the Department on April 28, 2015.
5. The petitioner's assertion that he did not receive the April 2014 overpayment notice was not credible.

### DISCUSSION

A hearing officer 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 by a county agency concerning FS eligibility or overpayment must be filed within 90 days of that determination. 7 C.F.R. § 273.15. An appeal from a state tax refund interception notice must be filed within 30 days of the date of the interception notice. Wis. Stat. §49.85(3)(a)2. The petitioner's April 2015 appeal is more than 30 days from the September 12, 2014, interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2014 interception decision.

### CONCLUSIONS OF LAW

1. The petitioner's April 2015, appeal was untimely with respect to the Department's September 2014 refund interception certification.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Wisconsin county where you lived (*e.g.*, Milwaukee County). 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 22nd day of May, 2015

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\sNancy J. Gagnon  
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 May 22, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit