



FH

Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

Redact

Redact

FTI/165786

Redact

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 21, 2015. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning petitioner's husband: FOP-165785.

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:

Represented by:

Redact (not present at May 1, 2015 Hearing)

Redact petitioner's husband

c/o Redact

Redact

Redact

Redact

Respondent:

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

BY: Redact, ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a resident of Rock County, Wisconsin.
2. The following 2 Claims were established against petitioner for overpayments of FS spanning the time period January 1, 2011 to January 31, 2013 in the total current amount of \$2,936.00:
 - (I) Claim Number [Redact]; January 1, 2011 to October 31, 2011; original amount of \$4,361.00 with a current outstanding balance of \$2,510.00; and,
 - (II) Claim Number [Redact]; September 1, 2012 to January 31, 2013; \$426.00 [this amount was continued FS benefits granted pending the Hearing in DHA Case No. FOO-143902 (Wis. Div. Hearings & Appeals January 29, 2013) (DHS); the request for a Hearing in that matter was withdrawn].¹
3. Petitioner received written notice from State of Wisconsin, dated March 14, 2014 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 \$2,936.00 to repay the FS overpayments 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.
4. Petitioner requested a Hearing via a fax dated April 30, 2015 that was received by DHA on May 1, 2015.

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 March 14, **2014**. Petitioner's request for a Hearing was not made until April 30, **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.

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this matter.

¹ The law provides that if an agency action is upheld by a Hearing *Decision* then a Claim against the household must be established for all overpayments resulting from the continuing benefits that were received. 7 C.F.R. § 273.15(k)(1) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.9.2.

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 \$2,936.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the 2 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 1st day of June, 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 June 1, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit