



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/166628

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 11, 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 September 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Jose Silvestre, Income Maintenance Specialist Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. On October 20, 2014, the agency sent the Petitioner two automated FoodShare Overpayment Notices:

Claim Number [REDACTED], in the amount of \$2,263.00, for the period of 06/01/13 to 05/31/14

Claim Number [REDACTED], in the amount of \$567.00 for the period of 05/01/14 to 08/31/2014

(Exhibits 4 and 5)

2. On November 5, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a repayment agreement. (Exhibit 6)
3. On December 2, 2014, January 5, 2015, and February 3, 2015, PACU sent the Petitioner dunning notices, to remind her about the overpayment. (Exhibit 7)
4. On March 13, 2015, PACU sent the Petitioner a tax intercept notice, advising her that her State tax refunds would be intercepted to satisfy the overpayment. (Exhibit 8)
5. All of the foregoing notices were sent to the petitioner at an address on [REDACTED], which was the Petitioner's last known address. The agency did not receive any returned mail. (Exhibits 4-8; testimony of Mr. Silvestre)
6. The [REDACTED] address was the Petitioner's brother's address. (Testimony of the Petitioner)
7. During the time in question, the Petitioner stayed with her brother on the weekends, but spent the week in the [REDACTED] area to help her ailing parent. (Testimony of Petitioner; Exhibit 1)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 11, 2015. (Exhibit 1)

### DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(2)*.

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook, §7.3.1.8*. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types  
Federal: All error types.
3. State: At least \$20;  
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;  
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.

6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

*FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

*Emphasis added*

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 notice was March 13, 2015. As such, Petitioner needed to file her appeal by April 12, 2015. Her appeal was not filed until June 11, 2015. As such, her appeal is untimely, with regard to the issue of the tax intercept, and there is no jurisdiction to hear the merits of her appeal.

At the hearing, Petitioner indicated that she wished to appeal because she disagreed with the agency's assertion that she was overissued Foodshare benefits June 1, 2013 and August 31, 2014.

However, appeal of the determination of FoodShare overissuance is not allowed here, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination and she did not do so.

Even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the overissuance, Petitioner's appeal regarding whether she was overissued FoodShare benefits is untimely.

An appeal of an overpayment determination, must filed within 90 days of the date of that action. 7 CFR, §273.15(g).

In this case, the date of action was October 20, 2014, the date the agency sent Petitioner the Notification of FoodShare Overissuances. (See Exhibits 4 and 5) As such, Petitioner needed file her appeal of the overissuance determination by January 18, 2015. She did not file an appeal until June 2015, well past the appeal deadline. As such, Petitioner's appeal of the determination of FoodShare Overissuance is untimely and there is no jurisdiction to hear the merits of that issue.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**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**

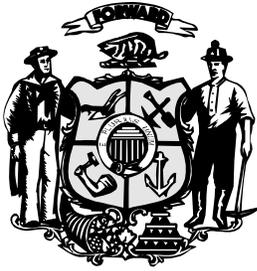
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 8th day of October, 2015

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\sMayumi M. Ishii  
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 October 8, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit