



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168361

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 23, 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]
[REDACTED]

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 29, 2015 the agency sent the petitioner a notice stating that he was overpaid FoodShare (FS) benefits in the amount of \$244.00 for the period of November 1, 2014 through December 31, 2014. This notice further explained that the petitioner had until April 29, 2015 to request a fair hearing.

3. On August 31, 2015 the Division of Hearings and Appeals received the petitioner's Request of Fair Hearing.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. § 273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code, §HA 3.05(3)(b). There is no jurisdiction if an appeal is untimely. A Hearing request that is not received within the 90-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

The petitioner's request for fair hearing on the overpayment was due on April 29, 2015. This is 90 days from the date of the overpayment notice. The Division of Hearings and Appeals did not receive the Petitioner's Request for Fair Hearing until August 31, 2015. This is four months after the appeal deadline, and I am without jurisdiction to decide this case.

I note that even I had jurisdiction, I would decide in the agency's favor. I reviewed all of the exhibits including a previous fair hearing decision by ALJ Cochrane. The petitioner's FS benefits were continued at a higher amount pending the outcome of that previous appeal. He lost the appeal, and then the agency sought to recover the additional benefits that the petitioner received for the two months that his previous appeal was pending.

I further note that the petitioner also wanted to contest his monthly FS allotment. The prior fair hearing decision by ALJ Cochrane addressed that issue. Nothing in terms of the FS budget has changed since that appeal. The only change in his monthly allotment is the \$10 monthly overpayment recoupment that is taken from his current FS benefits. The FS allotment is correct, and the overpayment is correct. I recognize that I do not have jurisdiction to decide either of these issues as one was decided by a previous ALJ and the other issue is untimely. Nonetheless, the agency's actions are correct in this case.

CONCLUSIONS OF LAW

The petitioner's appeal of the overpayment is untimely, and therefore I am without jurisdiction.

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 24th day of September, 2015

\sCorinne Balter
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 September 24, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability