



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 01, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 18, 2015, at Menomonie, 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: [REDACTED]

Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The county agency notified the petitioner on December 14, 2014, that it intended to intercept her income tax refund to recover a \$348 overpayment of FoodShare.
3. The petitioner appealed the agency’s decision on October 1, 2015.

[REDACTED]

## DISCUSSION

State FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). The department may recover an overpayment by intercepting a person’s income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of FoodShare benefits. Wis. Stat. § 49.85. The Division of Hearings and Appeals “may limit the scope of the hearing to exclude issues that...could have been presented at a prior opportunity for hearing.” Wis. Stat. § 49.85(4)(b). The department’s certification goes into effect 30 days from the date the recipient is notified unless it is appealed. Wis. Stat. § 49.85(3).

The department filed an action to recover \$348 in FoodShare. The petitioner’s appeal of this action was dismissed when she failed to appear for the hearing. *DHA Decision No.* [REDACTED] Because she had an opportunity to contest the underlying overpayment, I will bar her from raising it now. In addition, the agency notified her of its intent to intercept her taxes on December 14, 2014, but she did not appeal until October 1, 2015, well past the 30-day deadline. Because her appeal is late, the Division of Hearings and Appeals cannot consider it. Therefore, her appeal is dismissed.

I note that the petitioner says she does not have any income and does not file an income tax return. Thus, as a practical matter, this decision will have no effect on her. Her concern was that money is being taken from her social security check. I could not understand from the petitioner’s testimony why this was happening—she referred to the State of Alabama and did not indicate it had anything to do with Wisconsin FoodShare benefits—but even if I could, I could not rule on it because it is not before me.

## CONCLUSIONS OF LAW

The Division of Hearings and Appeals cannot consider the petitioner’s appeal because it is untimely.

**THEREFORE, it is**

**ORDERED**

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 Madison,  
Wisconsin, this 18th day of November, 2015

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\sMichael D. O'Brien  
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 November 18, 2015.

Dunn County Department of Human Services  
Public Assistance Collection Unit