



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/171656

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on February 23, 2016, at Madison, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of NA.
2. The agency issued FS overpayment notices to petitioner on 9/14/15 for claims totaling \$5,173.00.
3. Petitioner filed a request for hearing with DHA on January 27, 2016.

DISCUSSION

An administrative law judge 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 concerning FS, including an overpayment determination, must be filed within 90 days of the date of that action. 7 C.F.R. § 273.15(g). The petitioner's appeal was filed 134 days after the effective date of the action.

Petitioner explained that the address to which the notices were sent was a correct address she occupied prior to July 2015. Petitioner explained that due to her move and change of address placed with the post office her mail was delivered to her in December 2015. Petitioner then explained that she took the remainder of the time to try to figure out the overpayment or how to resolve it.

First, I find it difficult to believe that it took the post office 3 months from the mailing date to deliver the forwarded mail. Furthermore, the agency argued that FS overpayment notices bear designations to not forward. For both of these reasons, I find the explanation of December delivery to be unbelievable. Furthermore, even if delivered in December, the petitioner may still have had time to file a timely request as the deadline to file a request for hearing was 12/14/15. Even if late, such a request filed at that time may have made her claim of late delivery more credible. But, petitioner still elected to delay her filing until the end of January 2016 despite the notices clearly stating the need for a timely hearing request.

Thus, the hearing request was untimely, and no jurisdiction exists for considering the merits of the case. There is no relevant exception under law, and I possess no authority to reach the underlying merits of the FS overpayment determinations of September 14, 2015.

CONCLUSIONS OF LAW

The appeal is untimely

THEREFORE, it is

ORDERED

That this 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.

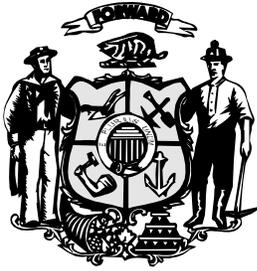
APPEAL TO COURT

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 8th day of March, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 8, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability