



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/171898

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2016, 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 May 11, 2016, by telephone. A prior hearing set for April 13, 2016, was rescheduled at the petitioner's request.

The issues for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect a FoodShare overpayment.

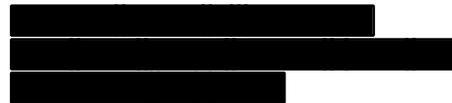
There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted] HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. On February 10, 2015, the Department mailed a *FoodShare Overpayment Notice* to the petitioner to her correct, last known mailing address of [REDACTED], [REDACTED]. The *Notice*, at page 2, advised the petitioner to file any appeal of the overpayment within 90 days. The petitioner received the *Notice* but did not appeal because her father, who is co-liable on the overpayment, assured her that he would take care of the matter.
3. The Department mailed written notice of another negative action to the petitioner's correct mailing address of [REDACTED], [REDACTED], [REDACTED] on **July 17, 2015**. The negative action was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$3,992 remained for possible interception. The debt was incurred for the December 1, 2013 through August 31, 2014 period (claim [REDACTED]). The notice also advised the petitioner to file an appeal of the interception certification within **30 days** of the July 17, 2015, notice. This interception notice was not returned by the Postal Service as undelivered.
4. In October 2015, the Department received additional information and concluded that the petitioner was not a member of the overpaid FS household from May through August 2014. As of October 30, 2015, she remained co-liable for only the portion of the claim related to December 2013 through April 2014, which was \$2,499.
5. The petitioner filed a hearing request with the Department on February 4, 2016.
6. The Department recouped a portion (\$206) of the overpayment from liable household members, leaving a current balance of \$2,293 remaining for collection.

DISCUSSION

A hearing officer 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 by a county agency concerning FS eligibility or overpayment must be filed within 90 days of that determination. 7 C.F.R. § 273.15. An appeal from a state tax refund interception notice must be filed within **30 days** of the date of the interception notice. Wis. Stat. §49.85(3)(a)2. The petitioner's February 2016 appeal is more than 30 days from the July 2015 interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2015 interception decision.

Even if this Judge had jurisdiction to review the interception action, there would have been no jurisdiction to review the correctness of the underlying FS overpayment determination of February 10, 2015, because the petitioner did not appeal from the overpayment determination within 90 days, as required by federal rule.

CONCLUSIONS OF LAW

1. The petitioner's February 2016 appeal was untimely with respect to the Department's July 2015 refund interception certification.

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 Madison,
Wisconsin, this 16th day of May, 2016

\sNancy J. Gagnon
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 May 16, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit

