



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/172078

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 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 April 20, 2016, 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:



Respondent:

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

By:

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of NA.
2. The county agency notified the petitioner on June 13, 2014, that it intended to intercept her income tax refund to recover an overpayment of FoodShare.
3. Petitioner moved to Washington State in January of 2014.

4. The petitioner appealed the agency's decision on February 17, 2016.

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 an overpayment of FoodShare, but she did not appeal until February 17, 2016, which was 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 argued that she moved as a result of domestic violence, that the address that she used was her mother's PO Box; at some point her mother became ill and could not afford the PO Box. None of this testimony was corroborated. While I can understand the difficulties presented by her situation, I do not possess powers of equity, which would permit me to consider the fairness of the situation. The respondent established that it followed the legal requisites involved in pursuing an overpayment, and that all overpayments must be recovered regardless of fault. As such, petitioner's untimely filing mandates dismissal of her appeal.

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.

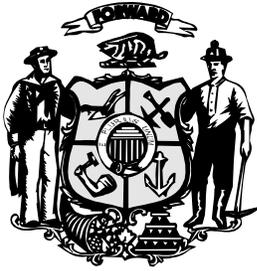
APPEAL TO COURT

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 May, 2016

\sPeter McCombs
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 18, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit