



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 204513

PRELIMINARY RECITALS

Pursuant to a petition filed on February 18, 2022, under Wis. Admin. Code §HA 3.03, to review a decision by the Dunn County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on March 15, 2022, by telephone.

The issue for determination is whether petitioner's appeal of the FS overpayment was untimely filed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. On November 10, 2021, the agency sent petitioner notice of FS overpayment in the amount of \$4,454.00, for the period of May 1, 2021 to September 31, 2021. The notice indicated that he 90 days (stated to be February 8, 2022) from the date of the notice to request a fair hearing to contest the overpayment action. Exhibit 1.
3. The overpayment notice in Findings of Fact #2 informed petitioner that he could request a hearing as follows:
 - You can ask for a hearing and/or a fair hearing request form at the agency shown at the top of this notice
 - You can get a fair hearing request form at <https://doa.wi.gov/Pages/LicensesHearings/DHAWFSRequestingaHearing.aspx>
 - You can send the fair hearing request form or a letter asking for a hearing to the Division of Hearings and Appeals, PO Box 7875, Madison, WI 53707-7875
 - You can also fax the hearing request form to the Division of Hearings and Appeals at Fax # (608) 264-9885

Exhibit 1.

4. By postmark date of February 18, 2022, petitioner filed a request for hearing with the Division of Hearings and Appeals. Exhibit 7.
5. At hearing, the agency representative indicated there was an error in calculating the FS overpayment, and that the overpayment would be adjusted from \$4,454.00 to \$3,875.00. Testimony of agency representative.

DISCUSSION

State FS agencies must “establish a claim against any household that has received more [FS] benefits than it is entitled to receive.” 7 CFR § 273.18(a). An appeal of a FS overpayment must be filed within 90 days of the date of that action. 7 C.F.R.. § 273.15(g); Wis. Admin. Code §§HA 3.05(3)(a) and 3.03(3).

The DHA only has authority to review the merits of an appeal if there is authority (jurisdiction) to do so. DHA lacks the authority to address the merits of a case when the appeal is not timely filed. The deadline to appeal the FS overpayment determination was February 8, 2022. Petitioner’s appeal was filed ten days late.

It was argued by petitioner and his wife that the reason the appeal was untimely filed was because they were waiting on the agency to forward a copy of the Request for Hearing form for them to fill out and submit to DHA. Such is a self-serving claim that is not corroborated by any other evidence in the record before me. Moreover, the overpayment notice not only apprised of the deadline to appeal but provided a website site where the appeal form could be obtained online. The notice further indicated that the petitioner could simply send a letter to DHA requesting a hearing. The mailing address and fax number for DHA was provided in the notice. Petitioner did not explain why the option of sending a letter to DHA requesting a hearing was not pursued.

Based on the credible evidence in the record before me, I find that petitioner’s appeal of the FS overpayment was untimely filed. As the appeal is untimely, DHA does not have the authority (jurisdiction) to address the merits of the FS overpayment. I do not have the authority to extend the appeal

deadline based on good cause. I am also without authority to base any decision on grounds of equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, Village of Silver Lake, Wis. v. DOR, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes and administrative code provisions.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the FS overpayment was untimely filed.
2. DHA does not have the authority to address the merits of an action when the appeal is untimely filed.

THEREFORE, it is

ORDERED

That 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, 4822 Madison Yards Way, 5th Floor North, 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

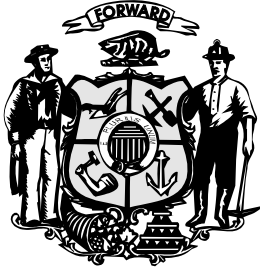
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 17th day of March, 2022



Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
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Telephone: (608) 266-3096
FAX: (608) 264-9885
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 17, 2022.

Dunn County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability