



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/171349

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2016, at Racine, Wisconsin.

The issue for determination is whether the petitioner timely appealed the termination of her FS benefits effective September 1, 2015.

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: [Redacted]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Racine County.
2. ALJ Ishii issued a prior fair hearing decision in which she concluded that child, [Redacted] was in [Redacted]'s household. [Redacted] is the guardian of [Redacted] [Redacted] works in Green Bay, WI, with a permanent address in Racine, WI. This address is the same as the

petitioner. The petitioner cares for child, [REDACTED] when [REDACTED] is away working in Green Bay, WI.

3. Based upon ALJ Ishii's decision, the agency concluded that child [REDACTED] had to be included in the petitioner's household. The agency further reasoned that under the FoodShare (FS) rules if [REDACTED] is included in the petitioner's household, then [REDACTED] also had to be included in the FS household.
4. On August 19, 2015 the agency sent the petitioner a notice stating that their FS benefits would terminate effective September 1, 2015. The notice went on to state that the petitioner had until December 1, 2015 to request a fair hearing with the Division of Hearings and Appeals.
5. The Division of Hearings and Appeals received the petitioner's Request for Hearing on January 13, 2016.

### DISCUSSION

An appeal of a negative action concerning FS must be filed within 90 days of the negative action, once timely and adequate notice is given to the household. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code §HA 3.05(3)(b). Failure to appeal within the 90-day limit means that the Division of Hearings and Appeals does not have jurisdiction to consider the merits of the appeal.

In this case the notice of negative action was dated August 19, 2015. The notice stated that the petitioner's FS benefits would terminate effective September 1, 2015. The notice went on to state that the petitioner had until December 1, 2015 to file a Request for Fair Hearing with the Division of Hearings and Appeals. The petitioner did not file a Request until January 13, 2016. This is well beyond the 90 day appeal time limit, and thus I have no jurisdiction, and must dismiss the petitioner's appeal.

I note that if the petitioner believes that the agency erred in including the child, [REDACTED] in her FS household, she may reapply for FS benefits. If the agency denies her FS benefits, she may appeal that denial.

### CONCLUSIONS OF LAW

The petitioner's appeal is untimely, and I do not have jurisdiction.

**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 Milwaukee,  
Wisconsin, this 2nd day of March, 2016

---

\sCorinne Balter  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 2, 2016.

Racine County Department of Human Services  
Division of Health Care Access and Accountability