



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171871

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 02, 2016, at Milwaukee, 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: [Redacted]

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner filed this appeal on Friday, February 5, 2016 by phone request with the Division of Hearings and Appeals. The appeal notes that Petitioner's FoodShare benefits were discontinued November 1, 2015.

3. Petitioner was sent a Notice of Decision dated October 19, 2015 that informed her that her FoodShare was to be discontinued effective November 1, 2015 for failing to comply with FoodShare Able-Bodied Adult without Dependent (ABAWD) work requirements. That Notice of Decision notes an appeal deadline of February 2, 2016, a Tuesday.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter 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 must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

Though it was not an issue brought up by the parties at the hearing, in part because of confusion caused by the lack of an appearance by FoodShare Employment and Training Program (FSET) personnel, in reviewing this for decision it became apparent that Petitioner's appeal is untimely. Though untimely by only a few days the Division of Hearings and Appeals does not have authority to expend those time limits.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as 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 Milwaukee,
Wisconsin, this 31st day of March, 2016

\sDavid D. Fleming
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 31, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability