



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 174558

PRELIMINARY RECITALS

Pursuant to a petition filed on May 23, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was first held on July 6, 2016 by telephone. Exhibits were exchanged post-hearing and second day of hearing was held on July 19, 2016, by telephone.

The issue for determination is whether petitioner's appeal was timely 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], IM Specialist Adv. and [REDACTED], IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner received FS as a household of 1 from at least September 1, 2011-February 28, 2015.
3. On August 6, 2014 petitioner completed a renewal for FS. Exhibit 1.
4. On August 7, 2014 the agency mailed petitioner a summary of that renewal. Exhibit 2.
5. On August 7, 2014 the agency issued a notice to petitioner advising him of his reporting requirements, which included that he needed to report if his income went over \$972.50. Exhibit 3.
6. On September 8, 2014 the agency issued a notice to petitioner advising him of his reporting requirements, which included that he needed to report if his income went over \$1265. Exhibit 4.
7. On February 6, 2015 the agency issued a notice to petitioner advising him that his FS would close March 1, 2015 for not completing his six month review. Exhibit 5.
8. On June 10, 2015 the agency received an alert that petitioner's wages were higher than had been budgeted for FS purposes.
9. On October 7, 2015, the agency mailed a notice to petitioner at his address of record to advise him that he was overpaid FS. Claim # [REDACTED] references the period of 9/1/14-2/28/15 in the amount of \$1159 due to client error for failing to report income.
10. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on May 23, 2016.

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 concerning FS must be filed within 90 days of the date of that action. 7 C.F.R. §273.15(g). The petitioner's appeal was filed 229 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable ("fairness") arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The agency met its burden of proof by showing it mailed all notices to petitioner's correct address of record.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

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, **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 29th day of July, 2016

\s _____
Kelly Cochrane
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 July 29, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability