



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 174640

PRELIMINARY RECITALS

Pursuant to a petition filed on May 26, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on July 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal and, if so, whether the agency properly reduced the Petitioner's FS benefits effective December 1, 2015.

There appeared at that time and place 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]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On November 6, 2015, the Petitioner submitted a six month report form (SMRF). She reported [REDACTED] as her employer with a start date of October 1, 2015. She reported working 2 hours/week at \$7.25/hour.
3. On November 25, 2015, the agency issued a Notice of Proof Needed to the Petitioner informing her that verification of her employment and work study program was required. The due date for the verifications was December 4, 2015.
4. On November 30, 2015, the agency received an employment verification from [REDACTED] reporting that the Petitioner worked 20 hours/week @\$9.25/hour.
5. On December 1, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$134/month in FS benefits effective December 1, 2015. The notice further informed her that this was based on gross monthly income of \$740 from [REDACTED]. In addition, the notice advised her of the right to appeal this determination by filing a request for a hearing by March 1, 2015.
6. On February 8, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$134/month in FS benefits effective March 1, 2015. The notice further informed her that this was based on gross monthly income of \$740 from [REDACTED]. In addition, the notice advised her of the right to appeal this determination by filing a request for a hearing by May 31, 2016.
7. On May 27, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$194/month effective June 1, 2016. This was based on gross income of \$0.
8. On March 11, 2016, the Petitioner contacted the agency to report that the employment verification was incorrect and the agency had incorrectly calculated her gross monthly income. The agency provided the Petitioner with information regarding filing a fair hearing.
9. On May 26, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing examiner can rule on the merits of a case only 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). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 177 days after the agency action on December 1, 2015. For reasons unknown, the agency issued a Notice of Decision to the Petitioner on February 8, 2016 informing her that her FS benefits would remain at \$134/month effective March 1, 2016. The notice also informed her of the right to a hearing by filing a request for hearing by May 31, 2016. The Petitioner filed a hearing request on May 26, 2016.

Though the date of agency action here is December 1, 2015 and there was no change in that determination until June 1, 2016, the agency issued a notice to the Petitioner regarding her FS benefits on February 8, 2016 with a new appeal deadline. I conclude that the Petitioner's appeal is not timely as to the December notice and that I have no jurisdiction over FS benefits for the period of December 1, 2015 – March 1, 2016. I conclude that the Petitioner's appeal is timely as to the February notice and that I have jurisdiction over the agency's determination regarding benefits for the period of March, 2016 – May 31, 2016.

The agency did not err in this matter. [REDACTED] provided an inaccurate verification of Petitioner's employment. The agency had no way of knowing it was inaccurate and Petitioner did not contact the agency until March 11, 2016 to inquire about her benefits. At that time, the Petitioner was informed that she would need to submit a new verification if it was incorrect. The Petitioner testified that she had

difficulty getting a new verification from the school. She stated that she was also informed by the agency worker that FS benefits could be back-dated if there was an agency error. At the hearing, the Petitioner submitted a letter from ██████ asserting that the verification it had submitted was incorrect and that the Petitioner worked an average of 2.5 hours/week from September 20, 2015 – December 13, 2015 and that she had not worked at all since December 15, 2015. This letter was not previously submitted to the agency.

I conclude that the agency did not err in this matter. It acted upon the information it was provided by the Petitioner and ██████. Specifically, the Petitioner did not report that the verification from ██████ was inaccurate until March 11, 2016 and did not provide any revised verification to the agency. Further, I find no evidence that the Petitioner reported she was no longer working since December 15, 2015. It is the responsibility of an applicant/recipient of FS benefits to ensure that the agency receives accurate and timely information regarding circumstances. In this case, the agency acted properly on the information that the Petitioner provided.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is untimely as to FS benefits for the period of December, 2015 – February 28, 2016. The Petitioner's appeal is timely as to FS benefits for the period of March 1, 2016 – May 31, 2016.
2. The agency properly determined the Petitioner's FS benefits for the period of March 1, 2016 – May 31, 2016 based upon the information provided by the Petitioner and her employer.

THEREFORE, it is

ORDERED

That 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, **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 16th day of August, 2016

\s _____
Debra Bursinger
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 August 16, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability