



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175412

PRELIMINARY RECITALS

Pursuant to a petition filed on July 8, 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 August 9, 2016, by telephone.

The issue for determination is whether the agency correctly denied petitioner's application for FS due to an ongoing intentional program violation (IPV) sanction.

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], HSPC Sr.
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 Milwaukee County.
2. In January 2013 the petitioner received FS.

3. In March 2016, the Department issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising that a FS intentional program violation hearing was scheduled for him on April 25, 2016. The April 25, 2016 hearing was conducted by Administrative Law Judge O'Brien of this office, and the petitioner did not appear.
4. On April 25, 2016, Judge O'Brien issued a decision that sustained the Department's position that the petitioner above had engaged in FS trafficking, and that he should be disqualified from the FS program for one year. Decision No. FOF/172629 (Wis. Div. of Hearings & Appeals, April 25, 2016)(DHS). The petitioner did not contact that judge within 30 days of April 25, 2016 Decision to argue that he had not received his hearing notice.
5. On May 3, 2016, the Department issued a FS disqualification notice to the petitioner, advising that he had one-year FS disqualification due to the IPV hearing.
6. On June 22, 2016 petitioner applied for FS.
7. On July 11, 2016 the Department issued a notice to petitioner stating that his application for FS was denied because he had an IPV.

DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient's behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

See, FoodShare Handbook (FSH) §7.3.2.4, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

If the Department believes that an IPV has been committed, it schedules an IPV hearing before a state Administrative Law Judge. That was done here. Following that hearing, the Administrative Law Judge issues a decision that either sustains or reverses the recommended IPV sanction. In this case, the Judge sustained the sanction, which allows the sanction to go forward.

Following the Judge's decision, the Department issued a notice to the petitioner advising him of the sanction imposition. The pertinent federal rule says there is no further right to an administrative hearing regarding the sanction:

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. ...

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. ...

7 C.F.R. § 273.16(e)(98)(i)-(ii).

Thus, the petitioner has no right to a hearing to contest the one-year IPV sanction here. He had the option of appealing to circuit court but he failed to check his mail at his mailing address of record and so missed the opportunity.

Further, it is a nonfinancial requirement that in order to receive FS, that an individual not be in a sanction period for an IPV. See *FSH* §3.14.1. Petitioner was advised of this 12 month sanction per the Decision in April 2016, and from the Department's notice in May 2016. Accordingly, the agency correctly denied his application because he did not meet this nonfinancial requirement. This appeal must therefore be dismissed. He may always reapply after the 12 month sanction period.

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 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.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's application for FS due to an ongoing IPV sanction.

THEREFORE, it is

ORDERED

The petition for review 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 22nd day of August, 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 August 22, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability