



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175422

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, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the Petitioner's appeal.

NOTE: The record was held open until August 16, 2016, to allow the Petitioner to supplement the record. The Petitioner provided a packet that included a verification of address change from the post office, a set of case comments, a copy of an Administrative Disqualification Hearing Notice and an Offender Detail Print Out. The packet has been marked as Exhibit 9 and entered into the record.

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], HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 25, 2016, the Division of Hearings and Appeals conducted an Administrative Disqualification Hearing at the request of Milwaukee Enrollment Services (the agency). The Petitioner did not appear for that hearing. (Exhibit 5)
3. The Administrative Disqualification Hearing Notice was sent to the Petitioner at the [REDACTED] (Exhibit 9)
4. On May 12, 2016, the Division of Hearings and Appeals issued a decision finding that the Petitioner committed an intentional program violation by selling his Foodshare benefits on October 14, 2012. The decision stated that the agency could proceed with disqualifying the Petitioner from the FoodShare program for one year. (Exhibit 5)
5. The May 12, 2016 decision was sent to the Petitioner at the [REDACTED] (Id.)
6. On May 16, 2016, the agency sent the Petitioner a notice advising him that as of June 1, 2016, he would not be enrolled in the Foodshare program, because he committed an intentional program violation. The notice was sent to Petitioner at a P.O. Box. (Exhibit 7)
7. Also on May 16, 2016, the agency sent the Petitioner a notice of Foodshare Disqualification. (Id.)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 8, 2016. (Exhibit 1)

DISCUSSION

The Petitioner filed an appeal to contest the closure of his FoodShare case, effective June 1, 2016. However, his case closed due a determination that he committed an intentional program violation and was, therefore, disqualified from the program.

Federal regulations do not allow further administrative review after an Administrative Disqualification Hearing decision has been issued. See, 7 C.F.R. § 273.16(e)(8)(ii). This is why the May 16, 2016 notice of case closure states, “Please Note: You cannot request a Fair Hearing if you have been disqualified from the FoodShare Program for an intentional program violation.” (Exhibit 7)

The Petitioner indicated that he did not get the Administrative Disqualification Hearing Notice. However, in 7 C.F.R. §273.16(e)(4), states, “the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.” The Petitioner’s appeal was filed on July 8, 2016, after the 30-day deadline. So, Petitioner’s claim is untimely and cannot be considered at this time.

The Petitioner has provided documentation in an effort to show that he was in custody at the [REDACTED] and could not have sold his benefits in October 2012. (See Exhibit 9, pg. 5) However, the Petitioner will have to address his claim in court. 7 C.F.R. § 273.16(e)(8)(ii) states, “The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.”

If the Petitioner would like assistance with this matter, he can contact Legal Action of Wisconsin for free or low cost legal advice, at 800-278-0633 or 414-278-7722. They are located at 230 West Wells Street in Milwaukee.

CONCLUSIONS OF LAW

Because Petitioner’s benefits ended due to a finding, after an Administrative Disqualification Hearing, that the Petitioner should be disqualified for committing an intentional program violation, the Division of Hearings and Appeals has no jurisdiction conduct further administrative review of that action.

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 22nd day of August, 2016

\s _____
Mayumi M. Ishii
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