



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/142680

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 05, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the calculation and accuracy of her FS benefits for January, 2012 is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Belinda Bridges, HSPC senior  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a household of six (petitioner and her five children). See Exhibit 1.
2. The petitioner receives FoodShare (FS) benefits for a FS household of six.

3. Milwaukee Enrollment Services (MES) sent January 4, 2012 and January 5, 2012 Notices of Decision to the petitioner stating that her FS benefit increased from \$79 to \$149 effective January 1, 2012 for a FS household of six. See Exhibits 1 and 4. Those notices stated that any hearing request must be received at the Division of Hearings and Appeals (DHA) within 90 days of the notice's effective date. The petitioner did not file any appeal within 90 days of those January 4, 2012 and January 5, 2012 notices. The petitioner admitted receiving the January 5, 2012 notice.
4. The petitioner faxed an appeal to the Division of Hearings and Appeals (DHA) on July 30, 2012, which was received at DHA on July 30, 2012 regarding the calculation of her FS benefits for January, 2012.
5. There is no evidence in the hearing record that petitioner filed any appeal prior to July 30, 2012 regarding her January, 2012 FS benefits.

### DISCUSSION

An administrative law judge (ALJ) 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 by a county agency concerning MA must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. **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, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the alleged negative action was the calculation and accuracy of her FS benefits for January, 2012.

During the September 5, 2012 hearing, petitioner admitted that she received the January 5, 2012 notice increasing her FS from \$79 to \$149 as of January 1, 2012 for a FS household of six. During that hearing, the MES representative provided copies of those notices detailing how MES had calculated the petitioner's FS benefits to be \$149 for January, 2012. This Administrative Law Judge (ALJ) asked petitioner why she waited until July 30, 2012 to fax her appeal to the Division of Hearings and Appeals (DHA). The petitioner contended that her sister allegedly later "found" a FS calculation mistake regarding the calculation of her January, 2012 FS benefits. However, there was no evidence that anyone in the county attempted to prevent the petitioner from filing a timely appeal at DHA.

The evidence in the hearing record indicates that petitioner delayed until July 30, 2012 to file her appeal with DHA. There is no evidence in the record to refute that the county agency sent the January 4, 2012 and January 5, 2012 notices to the petitioner at her correct address of record informing her of the amount of FS to which she was approved for FS Benefits as of January, 2012. Based upon the above, I conclude that the petitioner failed to establish any good cause for why her FS appeal should be timely, when she filed the appeal significantly more than 90 days after the January 4, 2012 and January 5, 2012 date of the notices confirming her FS benefits and stating the amount of her approved FS benefits effective January, 2012. Accordingly, for all the above reasons, I conclude that because petitioner did not appeal her FS denial within the 90-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the calculation and accuracy of her FS benefits as of January, 2012 is timely.

### CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the calculation and accuracy of petitioner's FS benefits for January, 2012, as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of September, 2012

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Gary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email  
Department of Health Services – email



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 14, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability