



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]

DECISION

FOO/143169

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 17, 2012, under Wis. Admin. Code HA § 3.03 (September 2001), to review a decision by the Marathon County Department of Social Services ["County"] concerning Food Stamps ["FS"], a Hearing was held via telephone on September 25, 2012.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Wisconsin Department of Health Services  
P.O. Box 7850  
Madison, Wisconsin 53707-7850

BY: Kris Weden, ES Supervisor  
Shannon Wise, ESS

Marathon County Department of Social Services  
400 East Thomas Street  
Wausau, Wisconsin 54403

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County, Wisconsin.
2. Petitioner received a written notice dated February 6, 2012 entitled *About Your Benefits*; that notice informed petitioner that as of March 1, 2012 he was not enrolled in the FS program; the notice also explained petitioner's right to request a Hearing -- including the deadline for requesting a Hearing.
3. Petitioner requested a Hearing by a form entitled *Request For Fair Hearing* that was dated August 13, 2012 and received by DHA on August 17, 2012 via fax.

**DISCUSSION**

An FS appeal is timely if it concerns any action by the County which occurred in the prior 90 days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (September 2001); *FoodShare Wisconsin Handbook* 6.4.1.

In this case, the action being appealed by petitioner is the fact that he was not enrolled in the FS program as of March 1, 2012. Petitioner was notified of this by a written notice dated February 6, 2012. Petitioner's Hearing request was not filed until August 17, 2012. See, Wis. Admin. Code § HA 3.05(3) (September 2001). This is more than 90-days after the March 1, 2012. Thus, petitioner's appeal is not timely. An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.03(4)(e) (September 2001).

Petitioner testified that he did not request a Hearing sooner because he called, was told his application had been denied, and did not understand what his rights were. However, the February 6, 2012 notice explained petitioner's right to request a Hearing (including the deadline for requesting a Hearing).

**CONCLUSIONS OF LAW**

DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file his request for a Hearing in a timely manner.

**NOW, THEREFORE, it is**

**ORDERED**

That 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 25th day of September, 2012

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Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals

c: Marathon County Department of Social Services - email  
Department of Health Services - email



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

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The preceding decision was sent to the following parties on September 25, 2012.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability