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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/143575

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 01, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 6, 2012, at West Bend, Wisconsin. The hearing was continued to and completed on December 4, 2012.

The issue for determination is whether Petitioner's appeal is timely, and if so, whether the agency correctly denied Petitioner's request to carry his children on his caseload and whether the agency correctly reduced Petitioner's FoodShare benefits .

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Renae Zagel

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On December 15, 2011, the Washington County Human Services Department (the agency) sent Petitioner a notice indicating that his November 30, 2011 application for FoodShare benefits was approved, but that his two children would not be included because they were part of another FoodShare case. (Exhibit 4, pgs. 3-8)
3. On April 19, 2012, the agency sent Petitioner a notice of negative action indicating that effective June 1, 2012, his FoodShare benefits would be reduced from \$200.00 to \$16.00. The notice also indicated that Petitioner's two children would not be included on his FoodShare case, because they were already part of another FoodShare case. (Exhibit 4, pgs. 9-13)
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 1, 2012. (Exhibit 1)
5. Petitioner and his ex-wife have shared placement of the children. Time with the children, expenses paid for the children and responsibility to care for the children are evenly divided. (Petitioner's testimony)
6. The children have been and currently are on the FoodShare case of Petitioner's ex-wife. (Petitioner's testimony; testimony from Ms. Zagel)

### **DISCUSSION**

A hearing officer 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 concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g); *See also FoodShare Handbook (FSH) §6.4.1*. A negative action can be the denial of an application or the reduction or termination of an ongoing case. In this case, the negative action was the reduction of Petitioner's FoodShare benefits and the decision not to include the children on Petitioner's FoodShare case.

The effective date of action was June 1, 2012. Thus, Petitioner needed to file his appeal by August 30, 2012. The April 19, 2012 notice clearly, though erroneously, indicated that the appeal deadline was August 31, 2012. Petitioner did not file his appeal until September 1, 2012, consequently, the appeal was untimely, and no jurisdiction exists for considering the merits of the case.

It should be noted that even if jurisdiction did exist to hear the merits of this appeal, Petitioner would not prevail. The agency correctly reduced Petitioner's benefits based upon unemployment insurance benefits he received during the time in question. (See Exhibit 4, pgs. 22-28) Further, the agency correctly denied Petitioner's request to place his children on his caseload.

Only one person may receive FoodShare benefits for a child. *FSH §3.2.1.1* By Petitioner's testimony, neither he nor his ex-wife are a primary caretaker for the children. All responsibilities for the care and upbringing of the children are divided evenly. In such cases, the parent who files for benefits first may receive FoodShare benefits for the children, unless the parents agree to a different arrangement. *FSH §3.2.1.1* It is undisputed that Petitioner's ex-wife filed for FoodShare benefits first. There is no indication in the record that Petitioner's ex-wife has agreed to allow Petitioner to carry one or both children on his caseload. As such, the children have correctly been placed on the ex-wife's caseload.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 served and 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, 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 Milwaukee,  
Wisconsin, this 5th day of December, 2012.

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\sMayumi 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 December 5, 2012.

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