



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

WWW/144263

PRELIMINARY RECITALS

Pursuant to section 49.152(1) of the Wisconsin Statutes, petitioner filed a request for a W-2 Fact Finding review with Policy Studies, Inc. (PSI), a Wisconsin Works (W-2) agency in Milwaukee, Wisconsin. A Fact-Finding review was held by PSI on September 12, 2012. PSI issued a Fact-Finding decision entitled "Fact Finding Summary and Decision," dated August 15, 2012.

The petitioner filed an appeal of the August 15th Fact-Finding Decision with the Division of Hearings and Appeals (DHA) on or about October 3, 2012. See, §§ 49.152(2)(b) & (c) (2005-06). Following a request for further information sent to the petitioner on October 5, 2012, petitioner responded in writing on October 17, 2012. On November 2, 2012, DHA requested the Fact-Finding file from PSI. On November 12, 2012, DHA received the Fact-Finding file from PSI.

The issue for determination is whether DHA has jurisdiction to consider petitioner's appeal.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

FACT FINDER:

Thomas Prete
Policy Studies, Inc.
6650 N. 76th Street
Milwaukee, WI 53223

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Milwaukee County.
2. Petitioner received, via certified mail,¹ a written Fact-Finding Decision from PSI dated August 15, 2012. The Fact-Finding Decision upheld the agency action regarding the W-2 payment reduction for petitioner’s August, 2012, payment. The Decision also explained petitioner’s appeal rights, and included the statement: “You must request a Departmental Review of W-2 and Job Access Loan issues within 21 days of the date of the Decision Date shown above. Late requests will not be accepted.”
3. Petitioner requested a Departmental review of the August 15th Fact-Finding Decision by a letter dated September 21, 2012, and submitted to DHA on October 3, 2012, per postmarked U.S. Mail.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. An appeal from a Fact-Finding Decision concerning W-2 is untimely if it is not filed with DHA within 21 days of the date on which a certified copy of the Fact Finding Decision is mailed. See, Wis. Stat. §§ 49.152(2)(b)1 ; “Wisconsin Works Manual” § 19.3.0. The date on which a certified copy of the Fact-Finding Decision is mailed is the same date as the Fact-Finding Decision. Wisconsin Works Manual 19.3.0. A hearing request is considered filed on the date of actual receipt or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c) (September 2001). A hearing request that is not filed within the 21-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case, the Fact-Finding Decision is dated August 15, 2012. Petitioner requested a Departmental review of the August 15th Fact-Finding Decision by a letter dated September 21, 2012 and received by the DHA on October 3, 2012, the date of the postmark on petitioner’s envelope. The last day of the allowable 21-day appeal time period was September 5, 2012 (21 days from August 15, 2012). Petitioner's hand-written letter requesting a Departmental Review was itself not dated until September 21, 2012, more than two weeks after expiration of petitioner’s appeal timeframe. Given this evidence it must be concluded that petitioner failed to file her request for a Departmental review within the allowed 21-days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal. Accordingly, petitioner’s petition must be dismissed.

CONCLUSIONS OF LAW

For the reasons explained above, DHA does not have jurisdiction to consider petitioner's appeal.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

¹ See, Certified Mail receipt no. 7011 2970 0002 4842 4643

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 Children and Families. 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: 201 East Washington Avenue, 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 7th day of December, 2012

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 7, 2012.

Wisconsin Works (W-2)