



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/144651

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 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 November 14, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the accuracy of her FS benefit reduction effective July 1, 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
Madison, Wisconsin 53703

By: Sharon Thacker, 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 resided with her boyfriend, [REDACTED] in a household of two.
2. The petitioner receives FoodShare (FS) benefits for a FS household of two.

3. [REDACTED] was a fleeing felon due to a May 3, 2011 arrest warrant. He was not eligible for FS as a fleeing felon per FoodShare Handbook, 3.18.1.
4. Milwaukee Enrollment Services (MES) sent a June 15, 2012 Notice of Decision to the petitioner at her correct address indicating that her FS benefits would be reduced from \$191.00 to \$24.00 effective July 1, 2012 due to a reduction of household size from two to one person. That notice 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 (by October 1, 2012). The petitioner did not file any appeal within 90 days of the July 1, 2012 effective date of that FS reduction action.
5. The petitioner mailed a written appeal to the Division of Hearings and Appeals (DHA) which was postmarked October 19, 2012 regarding the reduction of her FS benefits effective July 1, 2012. DHA received petitioner's appeal on October 22, 2012.
6. There is no evidence in the hearing record that petitioner filed any appeal with DHA regarding her July 1, 2012 FS reduction prior to October 19, 2012.

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 negative action was the reduction of her FS benefits as of July 1, 2012.

During the November 14, 2012 hearing, petitioner was unable to convincingly contest that she received the June 15, 2012 notice which stated that her FS benefits would be reduced effective July 1, 2012. That June 15, 2012 notice was sent to the petitioner at her correct address. The MES representative testified that the June 15, 2012 notice was not returned to MES as undeliverable. Furthermore, the petitioner was unable to establish with any evidence that she had any problems with her mail delivery. This Administrative Law Judge (ALJ) asked petitioner why she waited until October 19, 2012 to mail her appeal to the Division of Hearings and Appeals (DHA). The petitioner was unable to establish any valid good cause reason for delaying the filing of her appeal. There was no evidence that anyone at MES attempted to prevent the petitioner from filing a timely appeal at DHA.

The evidence in the hearing record indicates that petitioner delayed until October 19, 2012 to file her appeal with DHA. 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 July 1, 2012 effective date of the FS reduction. Accordingly, for all the above reasons, I must conclude that because petitioner did not appeal her FS reduction within the 90-day time limit, the Division of Hearings and Appeals has no subject matter jurisdiction to address the accuracy of her FS reduction as of July, 2012, as the appeal is untimely.

CONCLUSIONS OF LAW

There is no subject matter jurisdiction regarding the accuracy of petitioner's FS benefit reduction as of July, 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 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 Madison,
Wisconsin, this 12th day of December, 2012

\sGary M. Wolkstein
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 12, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability