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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145274

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 10, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on December 13, 2012, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely and whether the Kenosha County Human Service Department (the agency) correctly denied Petitioner's request to use a paid dental bill from 2011 as a medical expense.

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: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Sometime in 2011, Petitioner went to Burlington Family Dentistry to have a porcelain crown placed in her mouth, at a cost of \$850.00. Petitioner paid the bill in full by November 29, 2011. (Testimony of Petitioner; Exhibit 1, pg. 5 – Account History Report from Burlington Family and Laser Dentistry)
3. On July 9, 2012, Petitioner had a FoodShare review. At that time Petitioner submitted the documentation from Burlington Family and Laser Dentistry for use as a medical expense. (Testimony of Ms. Mayer; Exhibit 2)
4. Petitioner’s request was denied because the bill had already been paid. (Id.)
5. On July 11, 2012, the agency sent Petitioner a notice indicating that as of August 1, 2012, her FoodShare benefits would be going up from \$125.00 to \$126.00. The allowed medical expenses at that time were \$438.31. (Exhibit 8)
6. On September 10, 2012, the agency sent Petitioner a notice indicating that her FoodShare benefits would go up from \$126.00 to \$127.00. The allowed medical expenses remained unchanged. (Exhibit 4)
7. On November 1, 2012, the agency sent Petitioner a notice indicating that her FoodShare benefits would go up from \$127.00 per month to \$173.00 per month. The allowed medical expenses remained unchanged. (Exhibit 5)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 10, 2012. (Exhibit 1)

### **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). 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 is an alleged mistake by the agency in disallowing the use of a paid dental bill from November 2011 when calculating Petitioner’s FoodShare budget for August 2012 onward.

Whether Petitioner’s appeal is untimely is debatable. Although the agency issued a notice on July 11, 2012, concerning Petitioner’s benefits, it also issued a notice on November 1, 2012, using the same amount of medical expenses that did not include the November 2011 dental bill. Consequently, I am finding Petitioner’s November 10, 2012 appeal timely.

FoodShare allotments are based upon *prospectively* budgeted monthly income using estimated amounts. *FoodShare Wisconsin Handbook (FSH)*, §4.1.1. If a one-time bill has already been paid, it does not make sense to include it in a future budget. Thus, *FSH* §4.6.4.1, only allows “previously acquired (not yet paid) and current payments when calculating a medical expense deduction ...*Medical expenses paid prior to the certification period are not allowed.*” (emphasis added.)

Petitioner paid the dental bill, in full, in November 2011. This was prior to the current certification period, which apparently began in August 2012, after Petitioner’s renewal was completed in July 2012. Consequently, the November 2011 dental expense was properly omitted from Petitioner’s current FoodShare budgets.

### **CONCLUSIONS OF LAW**

Petitioner’s appeal is timely.

The agency correctly excluded the November 2011 dental bill when calculating Petitioner's medical expense deduction for the current certification period beginning August 2012.

**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 20th 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 20, 2012.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability