



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145175

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 08, 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 hearing was held on December 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly determined the Petitioner's FS 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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 29, 2012, the Petitioner submitted an online ACCESS application for FS benefits. He reported his minor daughter as a member of the household. He also reported that his daughter had been in his household since June, 2011.

3. On April 3, 2012, the agency called the agency that administers FS for the State of North Carolina and confirmed that the Petitioner's daughter was still a part of her mother's FS group in that state.
4. On April 4, 2012, the agency issued a Notice of Decision finding the Petitioner eligible for FS benefits of \$200/month. The notice informed the Petitioner that his daughter was not included in his FS group because she was still part of her mother's FS group in North Carolina. The notice further informed the Petitioner that the deadline for filing an appeal of the agency's determination was July 31, 2012.
5. On October 1, 2012, the Petitioner's daughter was removed from her mother's FS group and added to the Petitioner's group.
6. On November 8, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **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 by a county agency concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). The petitioner's appeal was filed 100 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

As dicta, even if the appeal were timely, I would have to conclude that the agency acted properly. The federal regulations are clear that an individual cannot be part of more than one FS group. Until the State of North Carolina removed the Petitioner's daughter from her mother's FS group, she could not be added to the Petitioner's FS group.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was not timely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 8th day of January, 2013

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\sDebra Bursinger  
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 January 8, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability