



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145262

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare (FS) benefits, a hearing was held on January 04, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether petitioner's appeal of the May 31 discontinuance of her FS benefits 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: Julie Fink

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On April 18, 2012, respondent advised petitioner in writing that petitioner's FS benefits would terminate on May 1, 2012, as her Six Month Report Form had not been received by respondent.

3. On April 29, 2012, petitioner submitted an online Change Report to respondent.
4. Petitioner requested a hearing regarding FS benefits not received for May, 2012 and June, 2012, on November 13, 2012 (postmark date).

DISCUSSION

FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Adm. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The agency notified the petitioner on April 18, 2012, that her FoodShare would end on May 1, 2012, because she had not completed her Six Month Report Form (SMRF). She contends that she did complete the form online, and respondent reports that it received a Change Form, not a SMRF. While I can find reasonable petitioner's confusion regarding the online form that she completed, the record does not contain anything to support the lengthy delay in filing an appeal regarding these benefits.

Petitioner did not appeal the May 1, 2012 termination of benefits until November 13, 2012. The appeal was filed 196 days after the discontinuance of benefits at issue here. In her November 13, 2012, submission she noted that she attempted to submit her appeal via facsimile on November 5, 2012. Even if I were to accept the November 5, 2012 filing date, the appeal would still be untimely.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 4th day of February, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on February 4, 2013.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability