



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/146569

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Columbia County Health & Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 27, 2013.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jessica McBride, ESS

Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner received a written notice dated December 28, 2010 entitled *About Your Benefits*; that notice informed petitioner that as of January 1, 2011 his monthly FS allotment would decrease to \$16 (from \$69); the notice also explained petitioner's right to request a Hearing -- including the deadline for requesting a Hearing.
3. Petitioner requested a Hearing by a form entitled *Request For Fair Hearing* that was dated January 11, 2013 and received by DHA on January 14, 2013 via U.S. Mail postmarked January 10, 2013.

DISCUSSION

An FS appeal is timely if it concerns any action by the County which occurred in the prior 90 days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (September 2001); *FoodShare Wisconsin Handbook* 6.4.1.

In this case, the action being appealed by petitioner is the fact that his monthly FS program allotment was reduced effective January 1, 2011. Petitioner was notified of this by a written notice dated December 28 2010. Petitioner's Hearing request was not filed until January 10, 2013. See, Wis. Admin. Code § HA 3.05(3) (September 2001). This is much more than 90-days after January 1, 2011. Thus, petitioner's appeal is not timely. An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.03(4)(e) (September 2001).

Petitioner testified that there was no reason he did not request a Hearing sooner.

CONCLUSIONS OF LAW

DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file his request for a Hearing in a timely manner.

NOW, THEREFORE, it is

ORDERED

That 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 27th day of February, 2013

\sSean P. Maloney
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 February 27, 2013.

Columbia County Health & Human Services
Division of Health Care Access and Accountability