



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149705

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2013, 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 June 27, 2013, at Milwaukee, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely filed for FS allotment determinations prior to April 2013, and (2) whether the agency has correctly determined the petitioner's shelter costs in the allotment calculations from April through May, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Paul Fredrickson, IM Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August 2012, the petitioner reported to the agency that his rent expense was \$550 monthly. On August 24, 2012, the Department sent a written notice to the petitioner advising that his FS

allotment would be \$16 monthly from September 1, 2012. In calculating the allotment, the notice declared that the agency was using \$550 monthly rent expense. The notice further advised that the petitioner had until December 3, 2012, to appeal that determination.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on May 31, 2013.
4. The petitioner is required to report a change in circumstances that would change the amount of his allotment. The petitioner did not report an increase in his rent until he filed a Six Month Report Form (SMRF) on January 30, 2013. Exhibit 2C.
5. The agency used the \$550 rent expense in determining the allotments for April and May, 2013. See, notices dated February 25 and April 15, 2013. The rent expense figure was corrected to \$565 for June 2013, forward.

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. The petitioner's appeal was filed 272 days after the date of the September 1, 2012, action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case for September through March.

The petitioner's 90-day appeal timeframe reaches back to March 2 (which misses the March 1 allotment determination), based on his May 31, 2013 appeal filing date. The agency did err in not crediting the petitioner with a \$565 rent expense in those months over which I have jurisdiction – April and May 2013. A change that increases benefits, and for which no verification is required, is to be effective in the month following the report months. *FoodShare Wisconsin Handbook*, § 6.1.3.3, online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

CONCLUSIONS OF LAW

1. There is no jurisdiction to review the allotment amounts prior to April 1, 2013, as the appeal is untimely for such purposes.
2. This Administrative Law Judge has jurisdiction to review the allotment determinations for April and May 2013; the agency erred in not using a \$565 rent amount in the April and May 2013 calculations.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to redetermine the petitioner's FS allotments for April and May 2013, by using a \$565 rent expense. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 Madison,
Wisconsin, this 3rd day of July, 2013

\sNancy J. Gagnon
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 July 3, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability