



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152117

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

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, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent a Notice of Decision dated February 26, 2013 that informed Petitioner that the agency was imposing a 12 month intentional program sanction as she had been found guilty in Racine County Circuit Court of violating a local ordinance. The notice does not include an effective date but the sanction was made effective April, 2013.

3. The local ordinance - Racine County Code of Ordinances, §11.24 - prohibits fraud in public assistance including the FoodShare program and has a forfeiture as the penalty.
4. Petitioner filed an appeal with the Division of Hearings and Appeals on April 26, 2013 concerning the imposition of the IPV sanction. That appeal was dismissed as abandoned on July 11, 2013. Petitioner did not ask for a rehearing.
5. Petitioner filed this appeal on September 12, 2013.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

Here this is the second appeal that Petitioner filed as to the April 1, 2013 IPV sanction. She did not appear for the July 10, 2013 hearing and it was dismissed. She did not seek a rehearing. Instead she filed this appeal on September 12, 2013. The appeal deadline for FoodShare matter is 90 days from the date of the action (*see FoodShare Wisconsin Handbook, §6.4.1.*); in this case that would have been June 29, 2013. Thus, by Federal law, the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this matter.

This does not prevent the local agency from reviewing the IPV procedure it has implemented with the Department of Health Services, especially given the requirements of 7 Code of Federal Regulations §273.16.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as the appeal is untimely.

THEREFORE, it is

ORDERED

That this 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, Room 651, 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 16th day of December, 2013

\sDavid D. Fleming
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 16, 2013.

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