



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████ ██████  
████████████████████  
████████████████████

DECISION

ENE/152773

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**PRELIMINARY RECITALS**

A petition was filed October 10, 2013, to review a decision by Marinette County Health and Human Services in regard to furnace repair under the Wisconsin Home Energy Assistance Program (WHEAP). A hearing was scheduled on December 11, 2013, by telephone. Prior to the hearing the agency sent the Division of Hearings and Appeals a copy of the WHEAP Furnace Program Manual dated September, 2013 concerning the availability of an administrative hearing under the program.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction over the issue raised by petitioner.

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
████████████████████  
████████████████████

Respondent:

Department of Administration  
101 East Wilson Street  
Madison, Wisconsin 53703

By: Ann Davis

Marinette County Health and Human Services  
Wisconsin Job Center  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Marinette County.
2. Petitioner filed an appeal with the Division of Hearings and Appeals concerning a dispute with the Marinette County WHEAP agency over a furnace repair question. He argues that the agency

should be required to allow heating companies other than the one the agency contracts with to provide services under the program.

### **DISCUSSION**

Energy Assistance is mandated by Wis. Stat., §16.385. The Department of Administration administers the program. §16.385(2)(a). The Department does so by publishing the Wisconsin Energy Assistance Program Operations Manual and other policy documents setting out eligibility for the program and other issues including dispute management. The manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent.

The Department's Furnace Program is described in the HE+ Furnace Program Manual found at <http://homeenergyplus.wi.gov/docview.asp?docid=24906>. The manual describes the Department's policies and consumer rights under the program. Specifically, at §1.1 of the manual, the following is provided: "Home Energy Plus Furnace Program service decisions are not eligible for appeal." While a person can appeal financial or non-financial eligibility, the Department specifically does not allow appeals of service decisions. The appeal in this case is precisely the type for which an appeal is not allowed under the Department policy. It thus would be fruitless to hold a hearing on the issue as one is not allowed within the program.

### **CONCLUSIONS OF LAW**

The Division of Hearings and Appeals does not have jurisdiction to hear petitioner's appeal concerning the choice of a heating contractor under the Home Energy Plus Furnace Program.

**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 Administration. 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: 101 East 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 December, 2013

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\sBrian C. Schneider  
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 December 4, 2013.

Marinette County Department of Human Services  
DOA - Energy Assistance