



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/153025

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly denied the Petitioner’s FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rose Englehart

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner received monthly FS benefits for the period of December, 2011 – December 31, 2012. On January 22, 2013, as part of his six month review, the Petitioner reported he obtained

employment and had earned income for the period of August, 2012 – December, 2012. The Petitioner’s FS case was closed effective January 1, 2013 for failure to provide verification of employment.

3. On April 8, 2013, the Petitioner submitted an online application for FS benefits.
4. On April 23, 2013, the agency conducted a phone interview with the Petitioner. He reported his last day of work at Advance Auto Parts was April 1, 2013 and his last paycheck was approximately April 11, 2013. He was informed of the need to have an employment verification submitted.
5. On April 24, 2013, the agency issued a Notice of Proof Needed to the Petitioner informing him of the need to verify employment status at Advance Auto Parts by May 8, 2013.
6. On May 10, 2013, the agency issued a Notice of Decision informing the Petitioner that his FS application was denied due to failure to provide requested verification. The notice also informed the Petitioner that if he wished to appeal the agency’s determination, he must file an appeal with the Division of Hearings and Appeals by August 9, 2013.
7. On May 26, 2013, the agency received an employment verification.
8. Based on the employment verification and actual wages earned, on June 3, 2013, the agency issued a Notification of FS Overissuance to the Petitioner. The notice informed the Petitioner of the agency’s intent to recover an overissuance of FS benefits in the amount of \$936 for the period of August 1, 2012 – December 31, 2012. The notice further informed him of the right to file an appeal of the overpayment by filing such appeal with the Division of Hearings and Appeals within 90 days of the notice.
9. On October 21, 2013, the Petitioner filed a Request for Fair Hearing indicating that he is appealing the termination of FS benefits because “I need these benefits. I’m terminal and I can’t afford food.”

DISCUSSION

A hearing officer can only rule on the merits of a case 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., sec. 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 of the termination of his FS benefits was filed 164 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The Petitioner did not specifically indicate in his appeal on October 21, 2013 that he also wished to appeal the FS overpayment issued on June 3, 2013. At the hearing, he indicated that he disputes the overpayment. With regard to that action, the Petitioner’s appeal was filed 140 days after the date of the action. Therefore, it is also untimely and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner’s appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 13th day of December, 2013

\sDebra Bursinger
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 13, 2013.

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