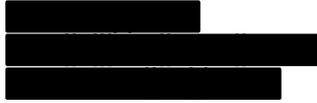




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/153853

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to FoodShare benefits (FS), a hearing was held on January 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Office of Inspector General properly implemented a 12-month Intentional Program Violation Sanction.

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: Nadine Stankey, Card Trafficking Auditor
Office of the Inspector General
Department of Health Services
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On October 30, 2013, the Division of Hearings and Appeals conducted an Administrative Disqualification Hearing, at the request of the Department of Health Services, Office of Inspector

General (OIG), to determine whether the Petitioner committed an intentional program violation (IPV). The Petitioner appeared at that hearing. (Exhibit 3)

3. On November 12, 2013, the Division of Hearings and Appeals issue a decision sustaining the OIG's determination that Petitioner committed an IPV and ordering OIG to disqualify the Petitioner from the FoodShare program for one year, effective the month following the date of the decision. (Exhibit 3)
4. On November 13, 2013, the Department of Health Services sent the Petitioner a Notice of Disqualification, indicating that she would be disqualified from the FoodShare program for 12 months, effective December 1, 2013. (Exhibit 6, pg. 4)
5. On November 14, 2013, Milwaukee Enrollment Services sent the Petitioner a notice indicating that she had one intentional program violation and that she would be disqualified for 12 months. (Exhibit 6, pgs. 1-3)
6. Both notices incorrectly advised the Petitioner that she had a right to file an administrative appeal of the 12-month sanction, with the Division of Hearings and Appeals. (Exhibit 6)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 25, 2013. (Exhibit 1)

DISCUSSION

At the hearing, the Petitioner indicated that she intended to appeal two things: 1) The decision finding that she committed an IPV issued on November 12, 2013 and 2) The imposition of the 12- month sanction.

APPEAL OF THE NOVEMBER 12, 2013 DECISION THAT FOUND PETITIONER TRAFFICKED HER FOODSHARE BENEFITS (COMMITTED AN IPV)

With regard to her appeal of the November 12, 2013 decision, I do not have jurisdiction to address the matter. Federal regulations do not allow an administrative appeal of a decision issued by the Division of Hearings and Appeals, sustaining an IPV. See, 7 C.F.R. § 273.16(e)(8)(ii).

What the Petitioner should have done, was file an appeal with the circuit court. Petitioner received instructions about this on the last page of the November 12, 2013 decision. However, given the incorrect information provided by the Department of Health Services, her confusion about how and where to file an appeal is understandable.

If the Petitioner has further concerns regarding the November 12th decision issued by the Division of Hearings and Appeals, she can contact Legal Action of Wisconsin, [REDACTED], Milwaukee, WI 53203, (414) [REDACTED]. This information is contained on page 2 of the November 14, 2013 notice that was sent by Milwaukee Enrollment Services.

IMPLEMENTATION OF THE 12-MONTH SANCTION

With regard to Petitioner's appeal of the implementation of the 12-month sanction, Milwaukee Enrollment Services acted correctly.

A person who has been found to have committed a FoodShare Intentional Program Violation, for the first time, is disqualified from receipt of FoodShare benefits for one year. *FoodShare Eligibility Handbook (FSH)*, §3.14.1.1. That penalty can be imposed by a Federal or State Court or by an Administrative

Disqualification Hearing. *FSH, §3.14.1*. States must report the IPV to the Federal government. *7 Code of Federal Regulations (CFR) 273.16(i)(1)*.

In the case at hand, the Division of Hearings and Appeals conducted an administrative disqualification hearing. The Division of Hearings and Appeals issued a decision on November 12th, agreeing with the Department of Health Service's determination that Petitioner committed a FoodShare Intentional Program Violation by trafficking her benefits. In the November 12, 2013 decision, the Division ordered the one year sanction to begin, "the first month following the date of receipt of this decision." Consequently, the agency correctly sent the notices on November 13 and 14, 2013, advising Petitioner that she was disqualified from receiving FoodShare benefits, effective December 1, 2013.

OTHER MATTERS

It should be noted that at the hearing, Petitioner indicated that her greater concern was the termination of the FoodShare benefits of her children, effective January 1, 2014. That issue is being addressed in a separate appeal, case FOO-154998.

CONCLUSIONS OF LAW

1. There is no jurisdiction for the Division of Hearings and Appeals to review the decision it issued on November 12, 2013, finding that Petitioner committed an IPV.
2. The agency correctly implemented the 12-month sanction, disqualifying the Petitioner from the FoodShare program, effective December 1, 2013.

THEREFORE, it is

ORDERED

That 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, 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 5th day of February, 2014.

\sMayumi M. Ishii
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 February 5, 2014.

Office of the Inspector General
Division of Health Care Access and Accountability