



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/155612

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether the Petitioner’s appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$3,670 for the period of January 1, 2013 – October 31, 2013.

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: Pam Hazley

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Florida.
2. Petitioner moved to Florida in or about September, 2012 and has been residing there continuously since that time.

3. On November 30, 2012, May 7, 2013 and September 27, 2013, the Petitioner completed online ACCESS renewals. She did not report her residence in Florida.
4. On October 2, 2013, the agency received returned mail sent to the Petitioner with a forwarding address in [REDACTED]
5. All of Petitioner's FS benefits have been used in Florida since September 11, 2012. Petitioner has a Florida driver's license and registered to vote in Florida.
6. On November 19, 2013, the agency mailed a Notification of FS Overissuance to the Petitioner at [REDACTED] informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$3,670 for the period of January 1, 2013 – October 31, 2013. The notice also informs the Petitioner of her right to request a hearing by filing an appeal with the Division of Hearings and Appeals within 90 days of the notice of overissuance.
7. On February 19, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The agency argues that the Petitioner's appeal is untimely and must, therefore, be dismissed. 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). The Petitioner's appeal was filed 92 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

As dicta, I note that the Petitioner did not dispute that she moved to Florida in September, 2012 and has resided there since that time. She testified that it was her intent to stay in Florida only temporarily to assist her ailing aunt. She testified that, at some point, she notified the agency that she was in Florida temporarily and was told to let the agency know if her situation changed. The Petitioner's stay has not been temporary, even if she initially intended it to be. The agency has sufficient evidence to demonstrate that she resides in Florida and, as a resident of Florida, she is not entitled to Wisconsin FS benefits.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the Petitioner's 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 15th day of April, 2014

\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 April 15, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability