



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/156221

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 3, 2014, by telephone.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time 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: Ms. Pang Thao-Xiong, IM Spec. Adv.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to December 2013, the petitioner had an ongoing FS case for three persons. Her case was due for a six-month review in November 2013. That review was completed on December 2. On December 3, 2013, the county agency sent a written notice to the petitioner. It said that her FS had been discontinued effective December 1, 2013, due to increased income.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on March 21, 2014.

### DISCUSSION

A hearing officer can only hear cases on the merits 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., § 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 was filed **108** days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The Administrative Law Judge pointed out to the petitioner at hearing that, in the future, if she believes there is something wrong on her case, she should request a hearing promptly. Also, because the petitioner stated that her earnings have dropped (less overtime), she was encouraged to file a new FS application to see if her FS benefits can start up again.

A separate decision will be issued regarding the petitioner's BadgerCare Plus benefits.

### CONCLUSIONS OF LAW

There is no jurisdiction as the FS appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of April, 2014

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\sNancy J. Gagnon  
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 4, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability