



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/156998

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services ["County"] in regard to FoodShare benefits [FS"], a Hearing was held via telephone on May 15, 2014. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FTI-156997.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to hear the merits of petitioner's appeal.

There appeared at that time via telephone 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: Robert Uebele, ESS

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County, Wisconsin.
2. Petitioner received a written notice dated November 21, 2013 entitled *About Your Benefits*; that notice informed petitioner that as of November 1, 2013 her FS was denied; the notice also explained petitioner's right to request a Hearing -- including the deadline for requesting a Hearing.
3. Petitioner requested a Hearing by a form entitled *Request For Fair Hearing* that was dated April 6, 2014 and received by DHA on April 21, 2014 via U.S. Mail postmarked April 17, 2014.

DISCUSSION

An FS appeal is timely if it concerns any action by the County which occurred in the prior 90 days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (February 2013); *FoodShare Wisconsin Handbook* 6.4.1.

In this case, the action being appealed by petitioner is the fact that her FS was denied effective November 1, 2013. Petitioner was notified of this by a written notice dated November 21, 2013. Petitioner's Hearing request was not filed until April 2014. See, Wis. Admin. Code § HA 3.05(3)(c) (February 2013). This is much more than 90-days after November 21, 2013. Thus, petitioner's appeal is not timely. An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

Petitioner testified that she did not request a Hearing sooner because the County stated it was investigating and would get back to her but that the County never got back to her. This is unfortunate, but it does not create jurisdiction where none otherwise exists.

CONCLUSIONS OF LAW

DHA has no jurisdiction to hear the merits of petitioner's appeal because petitioner did not file her request for a Hearing in a timely manner.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 June, 2014

\sSean P. Maloney
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 June 4, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability