



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/158125

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on June 26, 2014, at Kenosha, Wisconsin.

The issue for determination is whether there is jurisdiction to address the Petitioner's appeal of the termination of her FoodShare benefits effective July 1, 2014.

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: Robert Klingforth, PARIS Specialist
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.
2. On May 27, 2014, the Petitioner signed a Waiver of Administrative Disqualification Hearing. (Exhibit 3; Testimony of Petitioner)

3. On May 30, 2014, the Department of Health Services (DHS) sent the Petitioner a FoodShare Notice of Disqualification, advising her that she would be disqualified from the Foodshare program effective July 1, 2014, for a period of ten years. (Exhibit 5)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 5, 2014. (Exhibit 1)

DISCUSSION

In the case at hand, Petitioner's FoodShare benefits were terminated because she was administratively disqualified from the FoodShare program. Petitioner was administratively disqualified because she signed a waiver of her right to an Administrative Disqualification Hearing.

At the current hearing, the Petitioner asserts that she did not fully understand that she had a right to an administrative disqualification hearing and that she believed that she had no choice but to sign the waiver. However, that matter cannot be addressed at this time.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. "No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. **The disqualification penalty cannot be changed by a subsequent fair hearing decision.**" *Emphasis added.* 7 C.F.R., § 273.16(f)(2)(ii). Consequently, there is no jurisdiction for the Division of Hearings and Appeals to review the merits of this appeal.

However, the **Petitioner may file an appeal with an appropriate court.** *Emphasis added.* 7 C.F.R., § 273.16(f)(2)(ii) (The Division of Hearings and Appeals is not a court; it is an administrative hearing body) "The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy." *Id.*

If Petitioner needs assistance with filing an appeal with an appropriate court, she may contact either:

Legal Action of Wisconsin at 1-██████████; or

Wisconsin Judicare at 1-██████████

CONCLUSIONS OF LAW

There is no jurisdiction for the Division of Hearings and Appeals to address the merits of Petitioner's appeal.

THEREFORE, it is ORDERED

That the petition is dismissed.

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 27th day of June, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 27, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability