



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159875

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 September 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner’s Foodshare benefits, effective May 1, 2014.

There appeared at that time and place 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: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

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 February 20, 2014, the agency sent the Petitioner a reminder that she needed to complete a six month report form, in order to continue receiving benefits. The notice was sent to the Petitioner at an address on 7th Street. (Exhibit 2, pgs. 13 and 14)
3. On February 27, 2014, the Petitioner was arrested and taken into custody on a probation hold. She remained in custody until June 11, 2014. (Testimony of the Petitioner)
4. On March 24, 2014, the agency sent the Petitioner a copy of a Six Month Report Form (SMRF) with instructions to complete it and return it by April 5, 2014. The SMRF was sent to the Petitioner at an address on 115th Ct. (Exhibit 2, pgs. 15-26)
5. On April 14, 2014, the agency received returned mail, likely the SMRF sent on March 24, 2014. (Exhibit 2, pg. 12)
6. On April 18, 2014, the agency sent the Petitioner a notice, advising her that her FoodShare benefits would be ending effective May 1, 2014, because she had not completed her SMRF. This notice was sent to the address on 115th Ct. (Exhibit 2, pgs. 27-30)
7. On May 1, 2014, the Petitioner's sister called the agency on behalf of the Petitioner, updated Petitioner's address and completed a renewal. (Exhibit 2, pg. 12)
8. On that same date, the agency sent the Petitioner an application summary, which indicates that the Petitioner signed it electronically. (Exhibit 2, pgs. 31-34)
9. On May 2, 2014, the agency sent the Petitioner a notice of proof needed, requesting verification of school enrollment with a due date of May 12, 2014. The notice was sent to the Petitioner at an address on 115th Ct. (Exhibit 2, pgs. 35-38)
10. May 8, 2014, the Petitioner or her sister called the agency to update Petitioner's address. (Exhibit 2, pgs. 12)
11. On May 9, 2014 the agency received returned mail without a forwarding address, but it is unclear which notices were returned. (Exhibit 2, pg. 12)
12. On May 13, 2014, the agency sent the Petitioner a notice indicating that her FoodShare benefits remained closed effective May 1, 2014, because she was enrolled in school, but not working or meeting other qualifying student criteria. The notice was sent to an address on Locust St. (Exhibit 2, pgs. 39-42)
13. The Locust Street address is the Petitioner's sister's address. (Testimony of the Petitioner)
14. The Petitioner contacted the agency on July 10, 2014 to inquire about her benefits and report a change of address. (Exhibit 2, pg. 12)
15. On July 11, 2014, the agency sent the Petitioner another notice indicating that her benefits ended May 1, 2014, because she was enrolled in school, but not working or meeting other qualifying student criteria. This notice was sent to the Petitioner at an address on S. 74th Street. (Exhibit 3)
16. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 12, 2014. (Exhibit 1)

DISCUSSION

Was Petitioner's Appeal Timely?

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, the reduction of benefits, or termination of an ongoing case.

It is the agency's contention that the date of negative action was May 13, 2014, the date the agency effectively ended the Petitioner's benefits. Thus, the agency asserts that Petitioner's appeal needed to be filed within 90 days of May 1, 2014 which would put the appeal deadline somewhere around August 12, 2014.

Petitioner's appeal was post-marked August 12, 2014. "A hearing request shall be considered filed on the date of actual receipt by the division or agency, or the date of the post-mark, whichever is earlier..." Wis. Admin. Code §HA 3.05(3)(c) Accordingly, it is found that Petitioner's appeal is timely.

Did the Agency Correctly End Petitioner's benefits effective May 1, 2014?

The Petitioner contends that the agency did not correctly end her benefits, because she never received any of the notices sent after February 27, 2014. The Petitioner asserts that didn't receive the notices because she was incarcerated between February 27, 2014 and June 11, 2014.

The Petitioner might not have received the notice of proof needed, but she had her sister acting on her behalf and the agency sent the notices to the addresses provided to them. As such, the agency made no error.

Even if the Petitioner did not receive the notice of proof needed, and even if that was the fault of the agency, the fact remains that she was not entitled to FoodShare benefits in May 2014.

"An individual who is incarcerated for more than 30 days is ineligible for FoodShare..." *FoodShare Wisconsin Handbook (FHS) §3.2.1.2.2* The only exception would be if the individual received Huber privileges to care for a family member. *Id.*

By May 1, 2014, the Petitioner had been incarcerated for over 60 days and it does not appear that Petitioner received Huber Privileges to care for a family member, since she had an assistance group of one. (See Exhibit 2, pg. 5) As such, she was not eligible for FoodShare benefits at that time.

CONCLUSIONS OF LAW

1. The Petitioner's appeal was timely.
2. The agency correctly ended Petitioner's FoodShare benefits, effective May 1, 2014.

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 25th day of September, 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 September 25, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability