



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161163

PRELIMINARY RECITALS

Pursuant to a petition filed October 8, 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 October 29, 2014, at Milwaukee, Wisconsin.

The issues for determination are (1) whether petitioner's appeal was timely filed, and (2) whether the petitioner should have been found eligible for FS effective August 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: Simone Johnson, IM Spec. Advanced
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 July 2014, the petitioner had an ongoing FS case as a household of one person. Also, she was a student employed at least 20 hours weekly through April 2014. Her six month report form was processed in June 2014, which reflected the end of employment.

3. On June 12, 2014, the agency sent a written notice of negative action to the petitioner, advising that her FS would be discontinued effective July 1, 2014. The basis for discontinuance was that the petitioner is a college student who is not working at least 20 hours weekly, a FS requirement for college students.
4. On August 1, 2014, the petitioner contacted the local agency with questions about her FS case. She submitted paystubs on August 14, 2014, but did not report that she was no longer a student. The submitted [REDACTED] [REDACTED] paystubs show an average of 10.9 hours worked over the June 15 through August 10, 2014 period. She later reported that her employment at [REDACTED] ended August 2, 2014, so the [REDACTED] employment hours are not relevant in determining August eligibility.
5. On September 15, 2014, the petitioner filled out a new FS application. She was found eligible for FS from September 15, 2014, forward. She was no longer enrolled in college at that time.
6. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on October 8, 2014.

DISCUSSION

I. THIS APPEAL IS TOO LATE TO CONTEST THE 7/1/2014 CLOSURE.

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 99 days after the date of the closure action (7/1/2014). Thus, it was untimely, and no jurisdiction exists for considering the merits of that closure.

II. AUGUST ELIGIBILITY.

The petitioner agrees that the eligibility decision made on September 15, 2014, was correct for that date forward. However, she argues that she should have been eligible for July and August. As noted above, her appeal was too late to challenge the closure for July. Because there is no eligibility that can be made retroactive from an application date, the petitioner has to establish that she re-applied for FS in August if there is to be any award of FS for August here.

The petitioner argues that when she contacted the agency on August 1, 2014, the agency should have treated her query as an application attempt. It is noted that a person may file an online FS application on their own at any time, 24/7. The petitioner has the burden of proving, by a preponderance of the evidence, that she was trying to apply and that the agency directly thwarted that attempt. She has not met that burden.

Even if the petitioner was making an application attempt that was thwarted by the agency, the evidence of record does not establish that she was eligible. She did not report on August 1 (or at any time in August) that she was no longer a student. Therefore, she would not have been eligible unless her work hours averaged 20 hours weekly for August. I have reviewed the submitted paystubs, subtracted the year-to-date (YTD) wages taken from the June 27 check from the August 15 check's YTD wages, and then divided by her \$7.80 hourly wage. Those hours were then divided by the number of weeks (eight) running from June 27 through August 15, and the result was an average of 10.91 hours weekly. This falls short of the 20 hours weekly requirement, so the petitioner would not have been eligible in August even if the agency had re-evaluated her case in that month.

CONCLUSIONS OF LAW

1. There is no jurisdiction to challenge the July 1, 2014 FS case closure, because the hearing request was filed too late for that purpose.
2. The petitioner was not eligible for FS in August 2014, because she did not re-apply in August 2014. Alternatively, she was not eligible because she had not reported a change to her student status and she was not working at least 20 hours weekly.

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 2nd day of December, 2014

\sNancy J. Gagnon
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 December 2, 2014.

██████████ Enrollment Services
Division of Health Care Access and Accountability