



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FOO/161975

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to discontinue FoodShare benefits (FS), a hearing was held on December 9, 2014, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to backdate FS upon petitioner's reapplication.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Silvestre
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner received FS until March 1, 2014. By a notice dated February 17, 2014, the agency informed petitioner that FS would end March 1, 2014 because income was over the limit. Petitioner did not appeal.
3. Petitioner reapplied for FS on April 23, 2014. By a notice dated May 27, 2014, the agency denied the application because petitioner did not provide requested verification. Petitioner did not appeal.

4. Petitioner again reapplied for FS on November 5, 2014. FS were opened. On November 17, 2014 petitioner appealed the denial of FS back to March 1, 2014.

DISCUSSION

Petitioner filed this appeal because she was told that the FS agency would not count her high school age daughter's income if her daughter was enrolled in school. She believes the agency erred by counting her daughter's income in the previous months.

The reason the agency counted the income is that when petitioner's daughter's job started, the agency requested verification of her school enrollment and it was never received. Thus the income was counted and FS closed March 1.

The problem with petitioner's current appeal is that it was filed too late. When timely and adequate notice is given to an FS household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b). If the appeal is untimely, the Division of Hearings and Appeals does not have jurisdiction to hear the merits of the appeal. All Department notices include language explaining the appeal rights and the time limits.

Because petitioner did not appeal the discontinuance of FS within 90 days of March 1, 2014, or within 90 days of the denial issued on May 27, I do not have jurisdiction to review the correctness of those two actions. When petitioner reapplied for FS on November 5, the rules concerning new applications took effect, and FS could be issued only beginning with the date of the new application. See 7 C.F.R. §273.10(a)(1)(ii).

CONCLUSIONS OF LAW

Petitioner's appeal of the discontinuance of FS March 1, 2014, and the denial of FS issued on May 27, 2014, was untimely.

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 12th day of December, 2014

\sBrian C. Schneider
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 12, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability