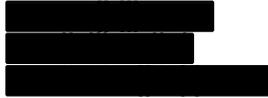




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/164036

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, 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 March 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is untimely.

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, 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 # ) is a resident of Milwaukee County.
2. On August 11, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice, advising him that he needed to complete a renewal by September 30, 2014. (Exhibit 2, pgs. 7-10)
3. On September 17, 2014, the agency sent the Petitioner a notice, indicating that his benefits would be ending effective October 1, 2014, because he had not completed the renewal. The notice further advised the Petitioner that he needed to contact the agency by the end of September if he wanted to continue receiving benefits. (Exhibit 2, pgs. 11-14)

4. Petitioner did not complete his renewal by September 30, 2014. (Exhibit 2, Testimony of Petitioner and Ms. Johnson.)
5. On October 29, 2014, the Petitioner called the agency after noticing that he did not receive his October FoodShare benefits. After being told that his FoodShare benefits ended because, no renewal had been completed, the Petitioner asked to complete the renewal over the phone. (Exhibit 2, pg. 6; Testimony of the Petitioner)
6. On October 30, 2014, the agency sent the Petitioner a Notice of Proof Needed, requesting verification of his employment and of his child support obligation. The verification was due November 10, 2014. (Exhibit 2, pgs. 19-24)
7. The Petitioner received the Notice of Proof Needed, but took no action, because he had been told that he earned too much money to receive benefits. (Testimony of the Petitioner)
8. The agency did not send the Petitioner a notice, advising him that his FoodShare case would remain closed due to lack of verification. However, no benefits were issued, since it was initially closed effective October 1, 2014, due to a lack of a renewal. (Testimony of Ms. Johnson; Exhibit 2, pg. 6)
9. On January 23, 2015, the Petitioner called the agency and reapplied for FoodShare benefits. The application was pended for verification of income. (Exhibit 2, pg. 6)
10. Petitioner provided the verification on February 11, 2015 and he was approved for benefits for February 2015 going forward. (Exhibit 2, pgs. 4 and 6)
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 17, 2015. (Exhibit 1)

DISCUSSION

The Petitioner filed an appeal to contest the loss of his benefits effective October 1, 2014. The Petitioner stated that he thought he should have been eligible for October 2014 benefits, because he only received one paycheck in that month. However, there is no jurisdiction to consider the merits of his appeal.

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 FoodShare 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, as in this case, the termination of an ongoing case.

The agency sent the Petitioner a notice on September 17, 2014, indicating that his benefits would be ending effective October 1, 2014, because he had not completed a renewal. Thus, the date of negative action was October 1, 2014. The Petitioner needed to file an appeal by January 2, 2015, to contest the ending of his benefits. He did not file an appeal until February 17, 2015. As such, his appeal is untimely and no jurisdiction exists for considering the merits of the case.

The Petitioner asserts that he did not get the September 17th notice. However, the Petitioner testified that the address on that notice was the correct address. In fact, it is the same address that Petitioner listed in his request for fair hearing.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613. In the case at hand, the Petitioner was not able to explain why he would not have received the September 17th notice. As such, it is presumed that he timely received notice of his benefits ending October 1, 2014.

It is noted that, because the Petitioner believed he was over the income limit, the Petitioner did not provide the requested verifications in November 2014. When properly requested verifications are not received, the agency may correctly leave a FoodShare case closed. *See FoodShare Wisconsin Handbook §1.2.1.2*

While the agency did not send the Petitioner a notice, advising him that his FoodShare case would remain closed effective October 1, 2014, because he did not provide the requested verifications, the fact remains that the agency did give the Petitioner timely notice of his benefits ending, effective October 1, 2014, when it sent the September 17, 2014 notice.

CONCLUSIONS OF LAW

The Petitioner’s appeal is untimely.

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 Milwaukee,
Wisconsin, this 11th day of March, 2015.

\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 March 11, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability