



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/165633

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 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 May 19, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed and if so, whether Milwaukee Enrollment Services correctly denied him FoodShare benefits.

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. In 2014, Petitioner was convicted of a felony offense, possession of marijuana with intent to deliver. He is currently on probation for that offense. (Testimony of Petitioner)
3. On October 16, 2014, the Petitioner filed an ACCESS application for FoodShare benefits. (Exhibit 2, pgs. 19-34)
4. On October 17, 2014, the agency sent the Petitioner a notice, indicating that his application was approved and that he would be receiving benefits from October 2014 going forward. (Exhibit 2, pgs. 35-40)
5. Also on October 17, 2014, the agency sent the Petitioner a Notice of Action Needed, indicating that he needed to contact the agency by October 27, 2015, to answer some questions about his household information. (Exhibit 2, pgs. 40-42)
6. On October 22, 2014, the agency sent the Petitioner a Notice of Proof Needed, seeking verification of drug test results by October 27, 2014. (Exhibit 2, pg. 43-46)
7. On November 24, 2014, a FoodShare Referral for Drug Screen was completed for the Petitioner. (Exhibit 2, pg. 15)
8. On December 2, 2014, the agency sent the Petitioner another Notice of Proof Needed, seeking the results of a drug test by December 4, 2014. (Exhibit 2, pg. 47-50)
9. On December 11, 2014, the Petitioner's Probation/Parole Agent sent the agency a letter indicating that the Petitioner tested positive for marijuana on December 11, 2014. No lab results were provided to the agency. (Testimony of Ms. Johnson; Exhibit 2, pg. 12)
10. On December 17, 2014, the agency sent the Petitioner a notice of a FoodShare Sanction, indicating that effective January 1, 2015, he would not be allowed to enroll in the FoodShare Program because he failed a drug test. The notice advised the Petitioner that he needed to file an appeal by March 18, 2015. (Exhibit 2, pgs. 51-52)
11. On December 19, 2014, the agency sent the Petitioner a notice that his benefits would be ending effective January 1, 2015, because he was convicted of a drug felony and failed a drug test. The notice advised the Petitioner that he needed to file an appeal by April 2, 2015. (Exhibit 2, pgs. 53-56)
12. On March 19, 2015, the Petitioner reapplied for FoodShare benefits. (Exhibit 2, pg. 8)
13. On March 20, 2015, the agency sent the Petitioner a notice, indicating that his application was denied. The notice incorrectly stated that the Petitioner was not enrolled for the period of March 19, 2015 through April 20, 2015, because he was not meeting a work requirement. (Exhibit 2, pgs. 57-60)
14. Petitioner's application was actually denied because he was under a 12-month sanction for failing a drug test. (Exhibit 2, pg. 8)
15. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 27, 2015.

DISCUSSION

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 benefits 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 the termination of an ongoing case.

With regard to the termination of Petitioner's benefits effective January 1, 2015, the petitioner's appeal is untimely. The Petitioner needed file his appeal by April 2, 2015. He did not file his appeal until April 27, 2015, 25 days late. As such, there is no jurisdiction to consider whether the agency correctly imposed a 12-month sanction and terminated the Petitioner's benefits on January 1, 2015, due to a failed drug test.

With regard to the denial of his March 19, 2015 application, Petitioner was well within the filing time limits. It is questionable whether the agency gave the Petitioner adequate notice about the reason for his application denial, because the March 20, 2015 notice states an incorrect reason for the application denial. However, the fact remains that the agency correctly denied the Petitioner's March application for benefits, because he was under a 12 month sanction for failing a drug test.

A "drug felon" is "a person (adult or minor) who is convicted of a felony in state or federal court involving the possession, use or distribution of a controlled substance within the last 5 years." *FoodShare Wisconsin Handbook (FSH) §3.20.1; See also 7 C.F.R. 273.11(m)*

"Applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken...**If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month...**" Emphasis added. *FSH §3.20.1.1*

CONCLUSIONS OF LAW

Petitioner's appeal of the January 1, 2015 termination of his FoodShare benefits is untimely and there is no jurisdiction to address the merits of that issue.

Petitioner did timely appeal the denial of his March 19, 2015 application for benefits. The agency correctly denied the Petitioner's March 19, 2015, because he was under a 12-month sanction for failing a drug test.

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.

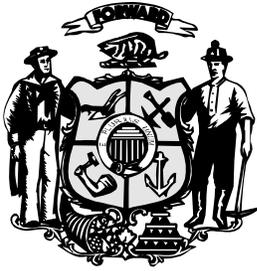
APPEAL TO COURT

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 28th day of
May, 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 May 28, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability