



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/166163

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 22, 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 July 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly determined petitioner's FS allotment as of February 1, 2015.

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: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 19, 2015, the respondent notified petitioner that her FS, effective February 1, 2015, would be \$16. In reaching the allotment determination, the respondent included a utility expense for telephone of \$30.

3. On May 8, 2015, petitioner contacted the respondent and informed the respondent that she paid for electric utilities. As such, the respondent updated her case and notified her that her FS would increase to \$101.00 effective June 1, 2015.
4. Petitioner filed an appeal on June 23, 2015.

### DISCUSSION

Petitioner's appeal does not question the June 1, 2015, FS allotment increase. At issue in this case is whether the respondent should have retroactively corrected petitioner's FS allotments based upon her contention that she had informed the respondent of her electric utility obligations back in January of 2015. Petitioner did not previously appeal the January determination of her FS allotment. At the time of the January, 2015, determination, the respondent sent petitioner a summary of information that it had collected, and requested that she contact the respondent if any information was correct. The petitioner did not report any updated or corrected information prior to May, 2015.

Petitioner's appeal regarding the FS allotment determination of January 19, 2015, is untimely. FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The petitioner seeks to have the benefits she received from February, 2015, through May, 2015, redetermined because she discovered that the agency did not consider her electric utility payments. Because the petitioner had an opportunity to address this concern at the time via the January 19, 2015 notice and the summary of information sent that same day, and because she did not appeal the agency's decision within 90 days, I cannot consider it.

### CONCLUSIONS OF LAW

The Division of Hearings and Appeals cannot consider the petitioner's appeal because it is untimely.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal 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 9th day of July, 2015.

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\sPeter McCombs  
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 July 9, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability