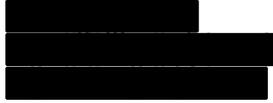




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/168176

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 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 November 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency erred in reducing petitioner's FS allotment.

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: [Redacted]

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. The agency reduced petitioner's FS from \$85 to \$10 effective May 1, 2015. The agency sent notice as to this on May 12, 2015. The notice also indicated that FS would increase to \$16 as of June 1, 2015. The notice indicated that petitioner was required to file any request for hearing by August 11, 2015.

3. Petitioner filed a request for hearing by mail postmarked August 20, 2015 and received at DHA on August 24, 2015.

### DISCUSSION

An administrative law judge 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, including an overpayment determination, must be filed within 90 days of the date of that action. 7 C.F.R. § 273.15(g). The petitioner's appeal was filed 9 days after the effective date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case. There is no relevant exception under law, and I possess no authority to reach the underlying merits of the FS reduction determination of May 12, 2015.

### CONCLUSIONS OF LAW

The request for hearing was not timely filed.

**THEREFORE, it is** **ORDERED**

The 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 3rd day of  
December, 2015

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\sJohn P. Tedesco  
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 December 3, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability