



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/169745

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 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 December 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner’s appeal is timely and, if so, whether the agency properly determined her FS benefits effective May 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: Belinda Brown

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

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 23, 2015, the Petitioner completed a FS renewal. Petitioner began receiving Social Security Disability Income (SSDI) on May 1, 2015. The agency updated the Petitioner’s case

with the SSDI income of \$953/month and reported shelter expenses of \$215/month for rent plus utilities.

3. On April 24, 2015, the agency issued a Notice of Decision to the Petitioner informing her that the agency determined she would receive FS benefits of \$33/month effective May 1, 2015 based on SSDI of \$953/month and rent expenses of \$215/month. The notice also informed the Petitioner of the right to appeal the decision by filing a request for a hearing on or before July 31, 2015.
4. On October 30, 2015, the Petitioner came to the agency and reported that her current rent expense is \$212/month but that she had previously paid \$400/month. The agency advised the Petitioner that \$400/month had never been reported as her rent expense and it could not go back and re-determined previous benefits if it had not been reported.
5. On October 30, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
6. On November 15, 2015, the Petitioner submitted verification that her rent expense for May, June and July, 2015 was \$400/month.

**DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the Petitioner filed an appeal based on her assertion that her rent expense for May, June and July, 2015 was \$400/month, not \$215/month as budgeted by the agency. The notice issued to the Petitioner on April 24, 2015 informed her that the agency was budgeting \$215/month. It appears that her rent was initially reported as \$215/month but she supplied verification in October, 2015 that she actually paid \$400/month for May, June and July, 2015. Unfortunately, there is no indication in the agency’s case file that the Petitioner reported this change to the agency until October 30, 2015. The deadline for filing an appeal of the FS allotment for those months expired on July 31, 2015. The Petitioner had notice of the deadline for filing an appeal if she did not agree with the FS allotment. Even if the Petitioner had filed a timely appeal, there is no indication that she reported a rent expense of \$400/month for May, June and July, 2015 until October 30, 2015.

Based on the evidence presented, I conclude that the Petitioner’s appeal is untimely as to the issue of FS benefits issued as a result of her initial application in April, 2015 for May, June and July, 2015.

**CONCLUSIONS OF LAW**

The Petitioner’s appeal 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 Milwaukee,  
Wisconsin, this 21st day of December, 2015

---

\sDebra Bursinger  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 21, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability