



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/169969

PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 10, 2015.

The issue for determination is whether petitioner's appeal was timely filed.

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: Kelly Kosloske, Lead ESS
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. On April 17, 2015, the county agency sent a written notice of negative action to the petitioner.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 5, 2015.

4. The negative action in this case was the termination of petitioner's FS benefits.

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 FS 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 or the reduction or termination of an ongoing case. The petitioner's appeal was filed 202 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I remind petitioner here that he can always reapply for FS. The agency representative explained at the time of this hearing that he could reapply, and that he would likely then need to prove that he qualified for an exemption from the Able-Bodied Adults without Dependents (ABAWD) work requirements. As described at hearing if he is exempt under any of the following, he may again qualify for FS:

EXEMPT ABAWD: A FS member is determined an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the IM agency:

- Determined unfit for employment, which includes someone who is:
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 - Receiving temporary or permanent disability benefits from the government or a private source;
 - Mentally or physically unable to work, as determined by the IM agency;
 - Verified as unable to work by a statement from a health care professional or a social worker.
- Receiving Unemployment Compensation (UC) or has applied for UC and is complying with UC work requirements;
- Regularly participating in an alcohol or other drug abuse (AODA) treatment or rehabilitation program;
- A student of higher education who is otherwise eligible for FoodShare (see section [3.15.1](#));
- A high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FS benefits; or
- Meeting the ABAWD work requirement outside of FSET through work and/or other allowable work program participation.

FS Handbook, §3.17.1.5 available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

CONCLUSIONS OF LAW

There is no jurisdiction as the 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 14th day of December, 2015

\sKelly Cochrane
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 14, 2015.

Racine County Department of Human Services
Division of Health Care Access and Accountability