



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/173721

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2016, 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 11, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was wrong for removing petitioner from the FS household after petitioner was found to have committed an IPV.

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. Petitioner was the subject of a decision in DHA Case #170489 in which petitioner was determined to have committed an intentional program violation ("IPV") relating to the FoodShare

program. Petitioner did not appear for that hearing the ALJ ruled against her in a decision dated February 15, 2016 and affirmed the sanction of a one-year bar from the FS program.

3. Petitioner did not request a timely rehearing from DHA or file a timely petition for review with the circuit court.
4. As of April 2016, petitioner's household composition was reduced by one due to petitioner's sanction. Her allotment to the household was reduced due to the removal of petitioner from the household composition.
5. Petitioner filed a request for hearing on April 18, 2016.

### DISCUSSION

At hearing, petitioner wished to argue the merits of the original IPV action involving sale of FS benefits to [REDACTED] Distribution in 2013. But, petitioner's opportunity to argue the merits of the IPV was on January 11, 2016 when the ALJ held the hearing on the IPV. Petitioner did not appear for that hearing. Petitioner also did not request a rehearing or appeal to the circuit court after the IPV matter decision was issued by ALJ Fleming on February 15, 2016.

Petitioner lacked credibility when she testified that she was unaware of the IPV matter. The hearing notices were sent to [REDACTED], which petitioner concedes was her address from February 2015 until February 2016. Petitioner even concedes that she still receives mail at that address. Petitioner simply asserts that she never received any of the numerous documents relating to the IPV case.

The petitioner's opportunity to appeal the IPV has passed and this is not a timely request for DHA to consider that issue. Petitioner has been sanctioned from the FS program. It is not error for the agency to remove her from the FS case given this sanction.

### CONCLUSIONS OF LAW

1. The agency did not err in its removal of petitioner from the FS household as she is under a FS sanction.
2. Any argument that the IPV finding is incorrect is not timely.

**THEREFORE, it is**

**ORDERED**

This matter is appealed.

### **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 16th day of June, 2016

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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 June 16, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability