



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOO - 175058

PRELIMINARY RECITALS

Pursuant to a petition filed on June 20, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on July 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that Petitioner’s increase in benefits began in July 2016.

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, WI 53703

By: [Redacted], HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On April 15, 2016, the Petitioner faxed verification that she was working 32 hours per week, earning \$8.25 per hour to a 1-[Redacted] number, which is the fax number for the Milwaukee

- County Document Processing Unit. (Exhibit 5; Exhibit 8, pg. 29; <https://www.dhs.wisconsin.gov/forwardhealth/imagery/index.htm>)
3. The agency received the aforesaid verification on April 18, 2016. (Exhibit 8, pg. 15)
 4. On May 26, 2016, the Petitioner contacted the agency to report her job assignment ending. (Exhibit 8, pg. 12)
 5. On May 27, 2016, the agency sent the Petitioner a Notice of Proof Needed, requesting verification of her employment by June 6, 2016. (Exhibit 8, pgs. 29-33)
 6. On June 1, 2016, it appears Petitioner's employer faxed something to a [REDACTED] number, which is the number for [REDACTED]. (Exhibit 3; Exhibit 8, pg. 29)
 7. On June 2, 2016, June 6, 2016 and again on June 7, 2016, the Petitioner contacted the agency to see if it had received her verification, each time she was told it had not been received. (Exhibit 8, pg. 12)
 8. The agency processed her verification on June 8, 2016. (Id.)
 9. On June 9, 2016, the agency sent the Petitioner a notice, advising her that her benefits would go up to \$357 per month, effective July 1, 2016. (Exhibit 8, pgs. 34-40)
 10. On June 13, 2016, the agency sent the Petitioner a notice, advising her that her benefits would be \$344 per month, effective July 1, 2016. (Exhibit 8, pgs. 41-45)
 11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 20, 2016. (Exhibit 1)

DISCUSSION

The Petitioner filed an appeal, because she believes the change in employment/income that she reported on May 27, 2016, should be considered effective June 1, 2016, and that her benefits should have increased beginning in that month, instead of July 2016.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Usually, the burden of proof falls on the state agency to show that its actions were correct, because it is the agency that is trying to change things by decreasing or terminating benefits. However, in a case like this one, that involves a request for an increase in benefits, the burden of proof falls on the Petitioner to show she is entitled to those additional benefits, because it is the Petitioner that is trying to change the status quo.

“All reported changes that cause an increase in the FoodShare benefit, including person additions, increase in expenses, etc., will be effective the first of the month, following the report month, *if required verifications are received within 10 days of the request for verification.*” Emphasis added; FoodShare Wisconsin Handbook §6.1.3.3

“If verifications are not received within 10 days, and the FoodShare case is not closed for at least one day, make the change effective the first of the month following the month verifications are received.” Id.

Petitioner asserts that she timely provided the requested verification of her employment ending. It is the agency's contention that Petitioner provided the verification a few days after the June 6, 2016 deadline.

On June 1, 2016, Petitioner's employer did fax a verification, but it looks like it was sent to a W-2 agency, not Milwaukee Enrollment Services.

The verification received by the agency is dated June 6, 2016. (Exhibit 8, pg. 18) The case comments indicate the verification was processed on June 8, 2016, but the date processed is sometimes a day or two after the agency actually receives the verification, so the case comments aren't necessarily solid evidence of when the verification was received.

Unlike the verification from April 2016, there is no date stamp showing when the agency actually received the June 6, 2016 verification. The Petitioner has provided no fax cover sheet showing when the June 6, 2016 verification was sent to Milwaukee Enrollment Services by her employer. Consequently, the Petitioner has not met her burden to prove that she provided the requested verification by the June 6, 2016 deadline. As such, the agency correctly made the change effective July 1, 2016.

The Petitioner argues that she should be given an increase in benefits for June because she tried really hard to get the verification to the agency on time. Petitioner's argument is equitable in nature, meaning it is based upon what she believes is fair. However, Administrative Law Judges do not exercise equitable authority, but must instead base decisions upon the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner's increase in benefits began in July 2016.

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, **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 12th day of August, 2016

\s _____
Mayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 12, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability