



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143609

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 2012, 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 October 02, 2012, at Milwaukee, Wisconsin.

The issues for determination are:

1. Whether the agency properly discontinued the Petitioner's FS benefits from August 1 – 12, 2012; and
2. Whether the agency properly included the Petitioner's husband CD in her FS group when determining FS eligibility and FS benefit allotment for August 13, 2012, September 1, 2012 and October 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
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 May 15, 2012, the Petitioner married her husband CD.

3. On July 16, 2012, the Petitioner submitted a renewal application for FS benefits. She reported that she had married CD and she reported a household size of four including herself, CD and two minor children.
4. In May, June and July, 2012, CD received FS benefits as the casehead of a two person FS group composed of himself and his minor son.
5. CD receives unemployment compensation benefits of \$111/week. CD reported his address to the UC agency as [REDACTED], [REDACTED] as of at least February, 2012.
6. On July 17, 2012, the agency issued a Notice of Proof Needed to the Petitioner requesting employment and income verification from the Petitioner's employers. The Notice contained a due date of July 26, 2012 for the verifications.
7. On July 17, 2012, the agency issued a Notice to CD informing him that his FS would end effective August 1, 2012. On July 23, 2012, CD filed an appeal with the Division of Hearings and Appeals. That appeal was designated as DHA Case No. FOO/142507. CD asserted that he does not reside with the Petitioner and that the agency improperly discontinued his FS benefits and improperly added him to the Petitioner's FS group.
8. On July 18, 2012, the agency issued a Notice of Decision notifying the Petitioner that her FS benefits would end effective August 1, 2012 if her renewal was not completed before the end of the month.
9. On August 13, 2012, the agency received the Petitioner's verifications. The Petitioner's FS benefits were re-opened effective August 13, 2012.
10. On August 15, 2012, the agency issued a Notice of Decision informing the Petitioner that her renewal application of July 16, 2012 was denied for failure to provide the required proof as requested on July 17, 2012 and due on July 26, 2012. The Notice indicated that the Petitioner's FS benefits ended on August 1, 2012.
11. On September 6, 2012, the Division of Hearings and Appeals issued a Decision in CD's appeal, Case No. FOO/142507 finding the evidence established CD resides with the Petitioner, the agency properly added CD to the Petitioner's FS group and the agency properly discontinued CD's FS group/benefits.
12. On September 11, 2012, the agency issued a Notice of Decision informing the Petitioner that her application of August 13, 2012 was approved. The Notice informed the Petitioner that she would receive \$181 for August, 2012, \$296 for September, 2012 and \$301 beginning October, 2012.

DISCUSSION

FoodShare (FS) is a joint federal-state program which is designed to improve the health of lower-income persons by enhancing their access to food. FS benefits are based on household size and a budget that takes account of income and certain expenses. Benefits are generally certified for twelve months at a time, with a face-to-face review being conducted prior to a new twelve-month certification period, 7 CFR §273.14. Upon request, the face-to-face review can be held by telephone interview with mail submission of required documentation.

The certification period for petitioner's FS benefits was set to expire on July 31, 2012, and on July 17 and 18, 2012, the agency sent her the requisite notices to request required verifications and remind her that her renewal was required to be complete by July 31 in order to continue the FS. See, 7 CFR §273.14(b). There was no dispute that the Petitioner's employment and income verifications were not submitted to the agency until August 13, 2012. The agency re-certified her FS case as of August 13, 2012.

7 C.F.R. § 273.14(e)(2) provides, in the parts relevant here, as follows:

Notwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification....If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action.

Based upon these facts, I can only conclude that the federal FS regulations direct that when a recertification application is actually completed within the 30 days after the end of the prior certification period, then the date the household takes the required action is the beginning date of eligibility. Here, that was August 13, 2012. Under this rule, the agency correctly discontinued the petitioner's FS from August 1 – 12, 2012.

Regarding the issue of including CD in the Petitioner's FS group, the evidence is overwhelming that the agency properly included CD. In her July 16, 2012 application, the Petitioner listed CD as a member of the household. CD listed his address as that of the Petitioner's address with the UC agency in February, 2012. In a separate appeal filed by CD regarding the closure of his FS group, the hearing examiner found the evidence to establish that CD and the Petitioner reside together and the agency properly discontinued CD's FS case when the Petitioner listed him as a member of her household. The Petitioner and CD asserted at this hearing that he does not reside with her despite Petitioner reporting him in July, 2012 as a member of the household. The only evidence produced at this hearing to support the Petitioner and CD's assertions that he does not reside with her is a copy of a rental agreement signed July 29, 2011 listing CD as a tenant at another residence. This is insufficient to establish CD's residence in July, 2012 and thereafter especially given the conflicting evidence of the address on file at the UC agency and Petitioner's application showing that CD resides with the Petitioner.

Based on the evidence, I conclude that the agency properly included CD in the Petitioner's FS group effective August 13, 2012. I have reviewed the agency's calculations for the FS benefit allotments for August 13, 2012, September 1, 2012 and October 1, 2012 and find them to be correct and accurate.

CONCLUSIONS OF LAW

1. The agency properly discontinued the Petitioner's FS benefits during the period of August 1 – 12, 2012.
2. The agency properly included CD in the Petitioner's FS group effective August 13, 2012.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -
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Enrollment Services



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The preceding decision was sent to the following parties on October 30, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability