



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/144212

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 28, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on October 31, 2012, by telephone.

The issue for determination is whether petitioner filed a six-month report form untimely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Kristy Warden, ES Supervisor  
Brown County Human Services  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. Petitioner resides with Mr. [REDACTED]. The household was scheduled to complete a six-month review by the end of July, 2012.
3. On July 9, 2012, Mr. [REDACTED] dropped the package with the completed review form in a Federal Express drop box. A Fed Ex representative called the FS agency and said they had the package but it did not have an account number or payment and thus could not be delivered. No further action was taken.

4. FS closed August 1, 2012 because the review was not completed.
5. On August 8 Mr. ██████ filed a copy of the report form with the county agency. Eventually FS were reopened effective August 8, 2012.

### DISCUSSION

An FS recipient must do a periodic review to continue eligibility. 7 C.F.R. §273.14. Failure to complete a review results in the closing of the case. If the review is not completed until after the case is closed because of household error or inaction, the FS are not issued in full. Instead, the case is treated as a new application, and benefits are to be prorated as of the date of the review. 7 C.F.R. §273.14(e)(3); FS Handbook, Appendix 2.2.1.4.

It is clear that petitioner attempted to send the report form timely. However, it can be argued that the failure of delivery was due to household error. Mr. ██████ testified that the correct account number was on the package but a Fed Ex employee entered it incorrectly. However, the note from Fed Ex that was provided just prior to the hearing stated that there was no shipper's account on the package.

Although the circumstances are as bizarre as I have seen in my time as an Administrative Law Judge, in the end I will find in petitioner's favor and order that the missing FS for the period August 1-7 be issued. Fed Ex appears to have called the agency to say that they had received a package from petitioner that could not be delivered. There is reasonable evidence that the call occurred even though it does not show up in case notes. Given that the call occurred, I find that the agency was put on notice that petitioner attempted to send the report form well ahead of the due date. I thus conclude that the failure to complete the review was not entirely due to client error or inaction, and the household thus is entitled to the missing FS.

### CONCLUSIONS OF LAW

Because petitioner attempted to send her six-month report by Fed Ex in a timely manner, and the county agency was made aware of the attempt even though the package was not delivered, the failure to complete the review timely was not due to client error or inaction.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to issue appropriate FS to petitioner for the period August 1-7, 2012. The agency shall do so within 10 days of this decision.

### **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 served and 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 Madison,  
Wisconsin, this 1st day of November, 2012

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Brian C. Schneider  
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 November 1, 2012.

Brown County Human Services  
Division of Health Care Access and Accountability