



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/143280

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 10, 2012, at Fond Du Lac, Wisconsin.

The issue for determination is whether respondent correctly terminated petitioner's FS benefits after petitioner failed to supply certain verification requested by respondent.

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: Molly Aird

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. The petitioner was an ongoing FoodShare recipient whose case was reviewed for renewal on June 26, 2012. On June 27, 2012, respondent sent petitioner a "Notice of Action and Proof Needed," requesting that he sign his application and verify his checking account balance, among other

requests. Exhibit 3E. When the agency did not receive that verification by July 13, 2012, it closed his FoodShare case.

3. The petitioner did not submit the requested verification information to the county agency before July 13, 2012.

DISCUSSION

FoodShare recipients seeking recertification must verify information the agency needs to determine their eligibility. 7 CFR § 273.2(f). Agencies must deny benefits to those who fail to verify information within 10 days of when the information was requested. *FoodShare Wisconsin Handbook*, § 1.2.1.2. The petitioner completed his telephone renewal application for the program on June 26, 2012, and was told, in writing, to verify various information. When he did not do so by July 13, 2012, the agency ended his benefits.

The petitioner does not dispute that he had to verify the information by July 13. Rather he contends that he never received the verification request letter in the first place. He reported that he resides in an apartment building, and has had frequent problems receiving mail. He concedes, however, that he does receive most of his mail; at times other residents tack his mis-delivered mail to the bulletin board near the apartment mailboxes. He reports that he has complained to the Post Office about this in the past.

It is up to the petitioner to prove by the greater weight of the credible evidence that he is entitled to FoodShare. The Post Office may deliver mail to the wrong address and neighbors may discard mis-delivered mail. But this is generally not what happens. When these two things happen simultaneously one can conclude either that the petitioner has extraordinarily bad luck or that he did in fact receive the request for required verifications, and for whatever reason failed to timely comply. This is a very close case. But, because I find the petitioner's testimony to be credible, I will remand this matter to the respondent with instructions to restore petitioner's benefits following receipt and approval of petitioner's required verification(s) and signature.

CONCLUSIONS OF LAW

Petitioner failed to verify information essential to his renewal application because respondent's Notice of Action and Proof Needed was never received by petitioner.

THEREFORE, it is

ORDERED

This matter shall be remanded to respondent with instructions to (1) within 10 days following the date of this Decision, re-send the Notice of Action and Proof Needed to petitioner, specifying a due date at least 10 days following the date of the notice; (2) review items of proof submitted by petitioner; and (3) if the proof is acceptable, restore petitioner's benefits as of July, 2012. Items 2 and 3 shall be completed within 10 days following receipt of petitioner's items of proof.

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 2nd day of January, 2013

\sPeter McCombs
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 January 2, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability