



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145319

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 17, 2012, at Fond Du Lac, Wisconsin.

The issue for determination is whether respondent appropriately denied petitioner's application for FS benefits for the months of October and November, 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: Debra Bowman

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. Petitioner separated from her husband, [REDACTED] [REDACTED] at some point after September 9, 2012 and prior to October 9, 2012. She subsequently submitted an application for FS benefits on October 10, 2012 for herself and her two minor children.

3. At the time of the October application, petitioner and her two minor children were included in case [REDACTED] with casehead, [REDACTED]
4. A verification letter was issued on October 22, 2012, requesting that petitioner verify employment at [REDACTED] among other requested verifications. All verifications were due on November 9, 2012.
5. Petitioner did not verify her employment at [REDACTED] on or before November 9, 2012.
6. Respondent notified petitioner on November 11, 2012, that it had denied her request for October, 2012, FS benefits since petitioner and her children had already received October benefits on another case. The notice also indicated that November, 2012 benefits were denied due to petitioner's failure to timely provide required verifications.

DISCUSSION

I. October, 2012, FS Benefits

Petitioner testified at hearing that she and [REDACTED] separated in October of 2012. She also presented evidence, in the form of a letter from her attorney, establishing that petitioner has placement of her minor children the majority of the time. See, Exhibit 1, p. 3. Petitioner contends that, due to court order regarding placement of her minor children following an October 9, 2012, Family Court Hearing, she should be entitled to FS benefits for October, 2012. Respondent counters that October benefits had already been disbursed to the FS household headed by [REDACTED] of which petitioner was a member.

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). The generic household definition requires that household members “live together” and “purchase and prepare” meals together. As such, prior to at least October 9, 2012, petitioner, Mr. [REDACTED] and their minor children were properly included in a single FS household. As noted by the respondent, October FS benefits were issued to the household, and FS rules and policy do not allow a person to be in more than one FS group at a time:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

FoodShare Wisconsin Handbook, § 3.4.1.

State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court

documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents can not or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still can not determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still can not determine which food unit the child should be in, call the CARES call center.

FoodShare Wisconsin Handbook, §3.2.1.1.

Respondent testified that it has accepted petitioner's argument that petitioner's minor children should be placed on her FS case prospectively. I concur that, in light of the temporary court order, petitioner's position constitutes a legitimate argument, but FS regulations do not permit the duplication of October, 2012, benefits for petitioner and her minor children.

II. November, 2012, FS Benefits

When dealing with the issue of the provision of information by a household, there is a clearly delineated process and a case may not be denied or discontinued unless those procedures are followed. That process is to specify in writing, what information is needed, and that the client has no less than a specific period of time in which to provide it. Generally that period of time is 30 days. However, in cases involving application or review, where the 30-day processing limit would not permit this much time, the agency is to allow no less than 10 days. Furthermore, the agency is required to assist the client when the client runs into difficulty in obtaining the needed documents. (See 7 C.F.R. §273.12(c); Income Maintenance Manual (IMM), Ch. I, Part C, 5.1.0).

For the purpose of these types of hearings, a case may only be closed, or denied, for a refusal to provide information, or for failure to provide requested verification within the specified period, after a written request.

During the December 17, 2012, hearing, the respondent's representative established that respondent correctly and properly denied the petitioner's October 10, 2012, FS application due to failure to timely verify required employment and income information.

In testimony at hearing, petitioner did not contest that she did not timely submit to respondent the required employment and income verification regarding the [REDACTED]. Instead, she alleged that she only worked there sporadically; therefore, she did not have any proof to provide. However, the record does not demonstrate that petitioner requested an extension of time from respondent to obtain the verification, nor that petitioner requested any assistance from respondent in obtaining the employer verification. As such, I conclude that the petitioner did not establish any good cause for failing to timely submit her employment verification to respondent, and that she did not refute respondent's case regarding the denial of her FS application on these grounds.

Accordingly, for the above reasons, the respondent correctly denied the petitioner's October, 2012, FS application due to (1) petitioner's receipt of FS benefits in October as part of an existing FS group ; and (2) failure to timely verify required employment and income information.

CONCLUSIONS OF LAW

1. Petitioner and her two minor children received FS benefits in October as part of an existing FS group, and were not eligible for duplicate benefits
2. Petitioner failed to timely verify required employment and income information.

THEREFORE, it is

ORDERED

That the petition 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 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 8th 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 8, 2013.

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