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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145498

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 23, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Trempealeau County Department of Soc. Services in regard to FoodShare benefits (FS), a hearing was held on January 9, 2013, by telephone.

The issue for determination is whether the Department correctly denied the petitioner's October 8, 2012, FS application for failure to timely submit verification.

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: Tom Miller, Supervisor  
Western Consortium

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.
2. The petitioner applied for Foodshare, BadgerCare Plus, and child care benefits on October 8, 2012. An interview was subsequently held, and on October 23 the Department issued a verification request to the petitioner, with a stated submission deadline of November 1, 2012. During her telephonic interview, the petitioner advised the Department worker (not Mr. Miller) that she is paid once per month, at the end of the month, and that projected verification deadline

of November 1 was not realistic for that reason. The interview worker advised the petitioner to “not worry about it.” At hearing, the Department conceded that the deadline should have been at least November 7, to allow 30 days from the application date.

3. The petitioner’s October paycheck was dated and mailed Wednesday, October 31, 2012, with the petitioner receiving it after that date. The Department received the requested verification on Thursday, November 8, 2012.
4. On November 2, 2012, the Department issued written notice to the petitioner advising that her application had been denied. The basis for denial was failure to timely submit verification. See, Exhibit 1B, Notice.
5. The petitioner contacted the Trempeleau County agency on November 7, requesting clarification as to her denial. The Department telephoned her on November 21 regarding her request, and advised her to file a new application. Following advice given in that contact, she filed a new application on November 23, 2012. FS was opened effective November 23 (prorated benefit), BadgerCare Plus was re-opened effective August 1, 2012, and child care opened effective November 1, 2012. BadgerCare Plus and child care rules allow for backdating of benefits; FS rules do not.

### DISCUSSION

As part of the FS application process, the agency must request and receive verification of a household’s earned income, as this is a means-tested program . The petitioner’s household had earned income. The agency must give the client at least 10 days to supply requested verification from the verification request, and 30 days from the application date. *Handbook*, §§ 1.2.1.2, & 2.1.3.7, online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . The responsibility for supplying verification then rests on the recipient. *Id.*, §1.2.1.3. When requested income verification is not timely received, the agency may correctly deny an application or close a case undergoing review. *Id.*, §1.2.4.1; 7 C.F.R. §273.2(g)(3) (January 2010). However, when the recipient tells the agency that she cannot get the verification, the burden shifts to the agency to assist her. If neither party can obtain the verification, the agency is to proceed with the best information available. *Id.*, §1.2.1.3. See in accord, the federal rule at 7 C.F.R. §§273.14(e)(1), 273.2(d)(1), and 273.2(f)(5)(i). The federal rule also instructs the agency to give the recipient the benefit of the doubt as to whether she is cooperating with its request. *Id.*, §273.2(d)(1).

The petitioner reported difficulty in timely securing verification to the county agency during the October 22 interview. The worker should have set the deadline at November 7, but instead set it prematurely. Further, given the petitioner’s articulation that she might need a short extension to get in the verification, either a 10-day extension of the deadline should have been granted, or the worker could have made a collateral contact with the employer. 7 C.F.R. § 273.2(d)(1), & (f)(4)(ii). Instead, the worker issued a misleading notice to the petitioner that told her (prematurely) on November 2 that her application had already been denied. Thus, she was told that it was too late to submit verification before the verification deadline had actually been reached. Under these misleading circumstances, the petitioner’s November 8 submission will be treated as a timely submission.

### CONCLUSIONS OF LAW

1. The petitioner should have been granted a brief extension to submit requested verification; her November 8, 2012, verification submission shall be treated as a timely filing.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the Department with instructions to continue the processing of the petitioner's October 8, 2012, FS application as though the requested verification was timely received. This action shall be taken within 10 days of the date 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 23rd day of January, 2013

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 24, 2013.

Trempealeau County Department of Soc Services  
Division of Health Care Access and Accountability