



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145726

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 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 January 03, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly pended the Petitioner's case for the period of July 1, 2012 – November 20, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] on
[REDACTED]

Respondent:

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

By: Katherine May
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 2, 2011, the Petitioner completed an online application for FS benefits indicating a household size of four including her husband LH.

3. On June 5, 2012, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of earnings for Petitioner and for LH. All requested items were due to the agency by June 15, 2012.
4. On June 6, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$469 for June, 2012 for a household of four including LH. The agency included only the Petitioner's earned income in determining the FS allotment due to lack of verification of LH's income. The notice indicates that the Petitioner has a right to appeal this determination and that any appeal must be filed with the Division of Hearings and Appeals no later than September 5, 2012.
5. The agency did not receive the requested information by June 15, 2012. The Petitioner's case was pended at that time.
6. On August 3, 2012, the Petitioner contacted the agency to report that LH was no longer in her household. The agency continued to pend the case for verification of residency of LH and for verification of earned income of Petitioner and LH.
7. On August 6, 2012, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of LH's residency and verification of earnings for Petitioner and for LH. The due date for the items was September 4, 2012.
8. On August 28, 2012, the agency received verification of Petitioner's earned income. The case continued to pend due to lack of verification of LH's residency and earnings.
9. On or about August 30, 2012, the Petitioner had a baby.
10. On October 2, October 23 and November 19, 2012, the Petitioner contacted the agency to indicate that she was having difficulty obtaining the requested verifications for LH because he was not in home and she could not contact him.
11. On November 20, 2012, Petitioner signed an Affidavit of Non-Residence that LH has not resided in her home at [REDACTED] Milwaukee, WI since June, 2012.
12. The Petitioner received \$138 in FS benefits for November, 2012.
13. On December 4, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Timeliness of Petitioner's Appeal

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the agency contends that the Petitioner's appeal is untimely because she did not file an appeal with DHA by September 5, 2012, the deadline noted on the June 6, 2012 Notice of Decision. The Petitioner is not appealing the determination of the agency in that Notice of Decision to issue \$469 for June, 2012. She is appealing the agency's determination to pend her case from July 1, 2012 – November 20, 2012 for lack of verification of LH's residency and income. Because of that ongoing determination, she did not receive any FS benefits for that period. Based on this issue, I find that the Petitioner's appeal on December 4, 2012 is timely.

Verifications

Agencies may request verification if information provided at application, review, or reported change is questionable, unclear, or incomplete and would have an effect on FS FoodShare eligibility or benefit level. FoodShare Handbook (FSH) § 1.2.5; 7 CFR Code of Federal Regulations 273.2(f)(2).

The applicant has primary responsibility for providing required verification and for resolving any discrepancies or questionable information. The agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process. FSH §1.2.1.3; 7 CFR 273.2(f)(5).

If all attempts to verify the information have been unsuccessful because the person or organization providing the information has failed to cooperate with the household and agency (for example, by charging a fee or refusing to complete a verification form), and all other sources of verification are unavailable, the agency must determine an amount to be used for certification purposes based on the best available information. The agency must clearly document the attempts to obtain verification and the reasoning for the estimate that is used. Best available information may include a customer's statement, oral or written. FSH § 1.2.1.3.

Household Composition affects eligibility. If the household composition is determined questionable, verification is required. FSH § 1.2.3.7.

The Petitioner in this case seeks FS benefits for the period of July 1, 2012 – November 20, 2012. She argues that she reported LH's absence from the home several times during that period and, though she was told she needed to provide verification of his absence, she was never told by the agency what type of verification to provide. It was not until November 19, 2012 that she was advised by the agency to execute an Affidavit of Non-residence to verify his absence.

According to the agency's case comments, the Petitioner first advised the agency of LH's absence on August 3, 2012. The Petitioner testified credibly that she asked the agency for assistance with regard to the type of documentation she could provide since she did not know the whereabouts of LH. The Petitioner also testified credibly that she knew LH continued to use her address but that she could not stop him from doing so. In addition, on August 3, 2012, the Petitioner advised the agency of the difficulty she had in obtaining employment verifications from LH's employer.

Based on the evidence presented and the regulations, I conclude that the agency must determine Petitioner's eligibility and allotment of FS benefits for August 1 – November 19, 2012. On August 3, 2012, the Petitioner reported LH's absence and requested assistance with obtaining verifications. The Petitioner requested additional assistance on at least three additional occasions in October and November, 2012. The agency is required to provide assistance when a customer indicates difficulty in obtaining requested verifications. There is no indication that the agency provided assistance until November 19, 2012 when the agency advised the Petitioner that an Affidavit of Non-residence would be sufficient verification of LH's absence. Because the Petitioner did not advise the agency of the LH's absence until August 3, 2012 and because the Petitioner did not previously advise the agency of any difficulty in obtaining the requested income verifications, I conclude that the agency properly pended the Petitioner's case for July, 2012.

CONCLUSIONS OF LAW

The Petitioner's appeal is timely. The agency did not properly pend the Petitioner's case for the period of August 1, 2012 – November 19, 2012 and did not properly deny FS benefits to the Petitioner during that period.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take the administrative steps necessary to determine the Petitioner's eligibility and allotment of FS benefits for the period of August 1, 2012 – November 19, 2012 based on a household of four (Petitioner and her three minor children). The agency shall issue a Notice of Decision to the Petitioner informing her of her eligibility and FS allotment for that period. The agency shall issue any benefits due to the Petitioner for that period. These actions 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 Milwaukee,
Wisconsin, this 30th day of January, 2013

\sDebra Bursinger
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 30, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability