



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147291

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2013, 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 March 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department shall restore FS to the petitioner for the February 2012 through August 2012 period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Alma Lezama, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has resided at the same address since 2006, and has always had a rent expense.

3. The petitioner has been a FS recipient since at least early 2011. Her case underwent an annual review on August 11, 2011, at which time the reviewing worker indicated that the petitioner had no rent expense.
4. As a result, no rent expense was used in the computation of the petitioner's FS allotments from September 1, 2011 through August 2012. The petitioner was notified of her allotment amount and the lack of a rent cost in a notice dated December 26, 2011, and in prior notices.
5. The petitioner's case was again reviewed on August 16, 2012. At that review, she reported a \$135 rent cost. The interviewing worker erred by failing to enter a rent cost into the petitioner's FS allotment calculations from September 1, 2012 forward.
6. The petitioner appealed on February 13, 2013, seeking restoration of benefits back to February 1, 2012.
7. In 2013, the Department realized that the rent expense should have been entered in the petitioner's FS calculation from September 2012 to the present. Consequently, the agency entered the rent cost beginning with September 1, 2012 (\$145 effective January 1, 2013) and re-computed benefits. It determined that the petitioner had been shorted \$41 per month for September through December 2012, and \$39 for January 2013. Notice of supplementation was issued on February 22, 2013, and the September – December 2012 supplementation was issued to the petitioner on February 21, 2013. The petitioner was issued correct \$86 monthly FS allotments for February and March 2013.

DISCUSSION

The petitioner asserts that her FS have been incorrectly computed, due to omission of a rent expense, from September 2011 through January 2013. She invokes the federal rule that allows restoration of missing FS for one year prior to the restoration request. 7 C.F.R. § 273.17. Restoration may be made, as long as the error was not caused by an error of the petitioner's, such as failure to report a deductible expense.

The Department's policy is in alignment with the federal rule, and reads as follows:

7.4.1.1 Restoring Benefits Due to Underissuance

Restore **FS** benefits when you discover a FS group received fewer benefits than it was entitled to receive. Only restore benefits if the group did not cause the underissuance. Do not restore benefits if the underissuance occurred more than 12 months before the month the underissuance is discovered.

Restore benefits even if the FS group is currently ineligible. The FS group does not need to request the restoration. Restore benefits as soon the underissuance is discovered.

The local agency servicing the FS case handles the correction if the case is receiving FS. If the case is closed, the county that last serviced the case corrects the error.

...

A request for a hearing is sufficient notification of FS group's request for restored benefits.

Foodshare Wisconsin Handbook, §7.4.1, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Prior to hearing, the Department acknowledged that it had erred in not budgeting a rent expense in the petitioner's allotment calculations for September 2012 through February 2013. That error has been corrected and the appropriate supplements for those months have been issued. I note that the petitioner's representative has tried to calculate the correct allotment amounts; although close, the calculations are a few dollars off, perhaps due to failure to use a \$442 (instead of \$444) utility standard from October 2012 forward.

The remaining area of disagreement is whether restoration is appropriate for the February through August 2012 allotments. The Department's position is that the petitioner did not report her rent expense at her August 2011 review, so the error was caused by the petitioner's reporting failure. The petitioner asserts that she would not have told the Department at review that her rent expense had ended, because it had not ended. The petitioner's explanation is the more plausible. I believe that the worker (not the worker appearing at hearing) erred at the August 2011 review, causing the underpayment. Therefore, I will order restoration of the missing benefits for February through August 2012.

CONCLUSIONS OF LAW

1. The Department has correctly restored the petitioner's FS allotments for September 2012 through February 2013.
2. The Department must restore the missing portion of the petitioner's FS allotments for February through August 2012, by inserting a \$117 rent expense in the calculation.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to restore the missing portion of the petitioner's FS allotments for February through August 2012, in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 15th day of April, 2013

\sNancy J. Gagnon
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 April 16, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability