



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147375

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 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 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred by not disbursing FS benefits to petitioner on behalf of his daughter for the month of February, 2013.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a FoodShare recipient as a one person household.
3. Petitioner's daughter was a FS recipient on her mother's case which was a separate case from petitioner's.

4. On January 16, 2013, petitioner's daughter began living with him and no longer resided with her mother.
5. On January 22, 2013, petitioner informed the agency that his daughter was living with him. His daughter was added to his case. As of this date, however, FS benefits were already in process for the mother's case including the allotment for petitioner's daughter.
6. On January 29, 2013, the agency sent notice to petitioner informing him that his daughter could not get February FS as she was already receiving an allotment in her mother's case.
7. The benefits were actually issued for the mother and daughter on February 3, 2013.
8. Petitioner filed a timely appeal.
9. In March 2013, petitioner began receiving the additional FS for his daughter.

DISCUSSION

According to the Wisconsin FoodShare Manual:

6.1.3.3 Changes That Cause an Increase in Benefits, Including Person Adds

*All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., **will be effective the first of the month following the report month** if required verifications are received within 10 days of the request for verification.*

If verifications are not received within 10 days, and the FS case is not closed for at least one day, make the change effective the first of the month following the month verifications are received.

Issue the appropriate supplement by the 10th day of the month the increase in benefits is effective.

Note: *A person cannot be a member of more than one (1) food unit and one (1) FS group in the same month except residents of shelters for battered women and children (3.4.1). Prior to adding a person from one FS case to another, remove the person from the previous FS case.*

(Emphasis added).

Petitioner reported to the agency on January 22, 2013 that his daughter moved in with him. The agency accepted this report and made the change effective on that date. It did not seek additional verification. According to this rule, the change should have been effective February 1, 2013. The agency argued that January 22 was after the January 17 date at which the FS was processed for the mother. The agency then cited the rule prohibiting dual benefits and argues that it cannot pay benefits to the mother and also the father. At first blush, one might think these two rules are at odds. But, the agency can certainly pay the proper allotment to the petitioner recognizing that he now has his daughter living with him. The Department can also take action to recoup the overissuance to the mother. If the Department recovers the overissuance then it would not have issued dual benefits.

CONCLUSIONS OF LAW

The Department erred in not issuing FS to petitioner for February 2013 because petitioner reported the addition to his food unit on January 22, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to issue a supplement to petitioner for the February 2013 in the amount of \$167. This shall be completed within 10 days.

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 April, 2013

\sJohn P. Tedesco
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 8, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability