



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147668

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of FoodShare benefits (FS), a telephone hearing was held on March 27, 2013, at Milwaukee, Wisconsin. At the request of the agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the county agency correctly discontinued the petitioner's February, 2013, FS due to income in excess of program limits.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the casehead of a 3 person FS household, and the group was receiving \$482 of FS in December, 2012, and \$478 in February, and again in March, 2013. The household did not receive any FS in January, 2013.
2. The petitioner was employed full-time at a company known as [REDACTED], beginning at least on October 22, 2012, and on or about November 11, 2012, she provided two weekly pay stubs from

- October 22-28, and October 29-November 4, 2012, to the agency to verify her estimated earnings. She was working 40 hours per week at \$12 per hour, and continued to do so until December 28, 2012.
3. On November 30, 2012, the county agency issued a Notice of Decision to the petitioner informing her that her FS would be discontinued, effective January 1, 2013, due to income over the program limits for FS.
 4. On December 28, 2012, the petitioner's employment at [REDACTED] ended for reasons unknown in this record.
 5. On January 7, 2013, the petitioner reported (online) to the county agency that her full-time employment with [REDACTED] had ended.
 6. Upon receipt of the report, effective on January 8, 2013, the agency pended the petitioner's case for verification of the job end date. See, Exhibit #2, p. 5.
 7. On January 18, 2013, the petitioner submitted a handwritten letter to the agency stating that she could not get the verification from [REDACTED], and that December 28, 2012, was her last day of work. Ibid.
 8. At no time between November 11 and January 7, 2013, had the petitioner reported that her earnings had in any way changed from that reported with the paystubs filed on November 11, 2012.
 9. On January 23, 2013, the county agency issued a Notice of Decision to the petitioner informing her that her application for FS had been approved and in each of the months of February and March, 2013, she would receive \$478 of FS.
 10. Thereafter, the petitioner contacted the agency and was told that she had reported in January, 2013, so no increase could apply in that month; she would be eligible for February and March, 2013; and no further action would be taken to increase or restore January, 2013, FS. See, Exhibit #2, p. 5.
 11. On February 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals seeking restoration of her January, 2013, FS allotment.

DISCUSSION

Elderly, Blind and Disabled FoodShare households without earned income must report listed changes in earned income, some unearned income amounts, address and child support obligations, within 10 days. See, *FoodShare Wisconsin Handbook*, 6.1.1. Any other FS household not within the EBD classification is subject to reduced reporting requirements, i.e., it is only required to report income changes if income exceeds 130% of the Federal Poverty Level. See, *FoodShare Wisconsin Handbook*, 6.1.3. Such reporting is to be done by the 10th of the month after the income has increased about 130%. Ibid.

The agency is required to verify reported changes in earnings, like a job loss. It appears that this occurred here as Case Comments reveal that the case was pended for such proof, and on the 10th day, i.e., the maximum and standard verification period, the petitioner provided a letter stating that she could not obtain the proof but her last day of work was December 28, 2013. It appears that the agency refused to accept this as verification and therefore did not re-open her case for any part of January. Rather, her case did re-open effective February 1, 2013.

The *FoodShare Wisconsin Handbook* provides as follows:

6.1.3.1 Processing Reported Changes

Request verification from the customer as soon as possible, following the report of a change. See *FSH*  1.2.1. To prevent "failure to act" agency *QC*  errors, eligibility workers must act on reported changes within 10 days. As a best practice a worker should process the change as soon as possible and not wait until the 10th day.

Example 1: Barry reports on June 29 that he started a job on June 19. His ES worker must request verification and allow Barry 10 days to provide it. If verification is requested on June 29, it will be due July 09. His ES worker will have time to process the verification and issue proper notice to Barry by adverse action in July. If the ES worker fails to act on the change by not requesting verification until July 09, Barry would have until July 19 to provide the verification, which is after adverse action. In this case it is likely that August benefits would be in error due to worker failure to act promptly on the reported change.

Lack of verification is a common cause of case closure. A new application for FS is not always required under specific circumstances when FS closes due to lack of verification during the certification period. Allow FS to reopen without a new application when closing for lack of verification after a change is reported or discovered, as long as the requested verification is submitted in the calendar month following case closure. Benefits are prorated from the date the required action was taken.

Example 2: Julie is certified for FS from March through February. Julie reports on April 5 that she began a job. Julie's worker, Marcia requests verification of Julie's job, due April 15. Julie fails to provide verification by the due date and FS closes effective April 30. Julie provides Marcia verification of her job on May 8. Marcia reopens Julie's FS case without requiring a new FS application and prorates benefits from May 8 forward. Julie's certification period remains the same March through February.

FS may also close for reasons other than verification. Allow FS to reopen when a change in circumstances during the month following the month of case closure causes the HH to regain FS eligibility, as long as the HH takes the required action.

Example 3: Pam's FS closes effective September 30 due to a pay increase at her job. Pam contacts her worker, Linda on October 8 to indicate her hours have been cut and she wants to reapply for FS. Linda informs Pam that she has the option of reapplying for FS or may provide verification of her new work hours to reopen FS effective the date she provides the verification. Pam chooses to provide verification, which she submits on October 12. Linda reopens Pam's FS with prorated benefits from October 12 forward.

Example 4: Joan's FS closes effective October 31 as a result of her new roommate's earned income. Joan contacts her worker Amy on November 19 to indicate her roommate moved out and she wants to reapply for FS. Amy provides Joan the option of reapplying for FS or reopening her FS effective November 19. Joan chooses to request Amy to reopen FS without a new application. Amy removes the roommate from the case and redetermines a prospective estimate of Joan's household income and expenses. Amy issues FS benefits from November 19 forward.

Example 3 applies to the fact pattern at issue here. There is no evidence that the petitioner was given the choice to re-apply on that report date or to establish eligibility on the verification date. Rather, verification was requested, and an attempt was made to provide it. It is not even clear, however, whether the request was reduced to writing itself. Ultimately, however, it appears that the agency was satisfied that employment had ended because it *granted* FS eligibility for February and March *without further ado*. Based upon these facts, I conclude that the best evidence of the job end date was the petitioner's written statement to that effect, given that the agency ultimately concluded she was no longer employed by at least February 1, 2013. See, *FoodShare Wisconsin Handbook*, 1.2.4.2.

I conclude that she is eligible for FS in January pro-rata to the re-application date of January 7, 2013. Given that the agency has already determined that an acceptable case file is present sufficient to pay February & March, 2013, benefits, I will not at this late juncture require a full new application to be prepared. Rather, to simply remedy this situation, the agency is to use the same FS budget determined for February, 2013, for January benefits, pro-rata retroactive to January 7, 2013, and issue this pro-rated allotment for January, 2013.

CONCLUSIONS OF LAW

- 1) That the agency correctly discontinued the petitioner's FS effective January 1, 2013, due to reported income in excess of program limits.
- 2) That the agency incorrectly processed the petitioner's January 7, 2013, report of a job end; she was unemployed as of at least that report date; and she was entitled to the opportunity to re-apply on January 7, 2013.
- 3) That the matter must be remanded for re-processing and issuance of all FS to which the petitioner was entitled retroactive to January 7, 2013, using her February 2013 FS budget information as if it were the same for January, 2013.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to: re-determine the petitioner's eligibility for FS as if she re-applied on January 7, 2013, using her February, 2013, FS budget data as if it were the same in January, 2013; and issue all FS to which she was otherwise entitled retroactive to January 7, 2013, and through January 31, 2013, if any, with written notice. These actions shall be completed within 10 days of the date of this decision. **IT IS FURTHER ORDERED**, that the part of the appeal concerning the discontinuance of FS from January 1 – 6, 2013, is herein 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 29th day of March, 2013

\sKenneth D. Duren, Assistant Administrator
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 March 29, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability